

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

No. 741.

THE UNITED STATES

v.

BESSIE WILDCAT, A MINOR, ET AL.

ON A CERTIFICATE FROM AND WITH OF COUNSEL TO THE
UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH
CIRCUIT.

CLERK'S OFFICE, FEBRUARY 1925.
LETTER OF CERTIFICATE RECEIVED FEBRUARY 19, 1925.

(35,571)

(25,571)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 741.

THE UNITED STATES

v/s.

BESSIE WILDCAT, A MINOR, ET AL.

ON A CERTIFICATE FROM AND WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH
CIRCUIT.

INDEX.

	Original.	Print
Caption	a	1
Transcript of record from the district court of the United States for the eastern district of Oklahoma.....	1	1
Amended bill of complaint.....	1	1
Exhibit "A"—Photographic reproduction of allotment certificate of Barney Thlocco.....	8	8
"B"—Homestead deed, Creek Nation to Barney Thlocco, dated March 11, 1903.....	9	9
"C"—Allotment deed, Creek Nation to Barney Thlocco, dated March 11, 1903.....	10	10
Order admitting Charles F. Bissett and others as defendants	11	11
Order granting Fulhoghee Barney leave to intervene.....	12	12
Order admitting Howard Weber as defendant.....	13	12
Amended intervening petition and cross-petition of Charles F. Bissett <i>et al.</i>	13	13
Order admitting Johnathan R. Posey as defendant.....	17	16
Petition and cross-petition of Johnathan R. Posey.....	18	17

Original. Principals

Order allowing Toney Chupeo <i>et al.</i> leave to intervene.....	22
Order making Chas. S. Smith <i>et al.</i> parties defendants.....	23
Order appointing guardian <i>ad litem</i> of Bessie Wildcat.....	24
Order appointing guardian <i>ad litem</i> of Martha Jackson.....	25
Order appointing guardian <i>ad litem</i> of Nora Watson <i>et al.</i>	25
Order allowing Saber Jackson leave to intervene.....	26
Order granting Martha Simmons <i>et al.</i> leave to intervene.....	26
Order admitting Robert Owen Burton <i>et al.</i> as defendants.....	27
Joint answer of defendants.....	28
Motion of the United States to strike answer of defendants.....	36
Order overruling motion to strike answer of defendants.....	36
Statement of evidence.....	37
Evidence on behalf of the United States.....	38
Exhibit No. 1—Photographic reproduction of census card of Barney Thlocco.....	38
Exhibit No. 2—Certified copy of roll in so far as it shows name of Barney Thlocco.....	39
Objection of defendants to admission of Exhibit No. 2	39
Opinion and order of the court sustaining objection to admission of Exhibit No. 2.....	40
Testimony of W. H. Angell.....	43
Exhibit No. 3—Certified copy of instrument under which the allotment of Barney Thlocco was made.....	44
Exhibit No. 4—Certified copy of the resolution passed by the Commission to the Five Civilized Tribes May 24, 1902, under which the allotment was made	44
Exhibit No. 5—Homestead deed, Creek Nation to Barney Thlocco, dated March 11, 1903.....	46
Exhibit No. 6—Allotment deed, Creek Nation to Barney Thlocco, dated March 11, 1903.....	48
Testimony of J. E. Kirkbride.....	50
Testimony of W. H. Angell (recalled).....	51
Exhibit No. 7—Records of the Commission to the Five Civilized Tribes pertaining to the institution of proceedings looking toward the cancellation of the enrollment of the name Barney Thlocco.....	52
Letter, Tams Bixby, chairman, to the Secretary of the Interior, dated August 25, 1904.....	52
Letter, W. A. Jones, Commissioner, to the Sec- retary of the Interior, dated September 7, 1904	53
Affidavits of Wilson Knight and Barney Yahola	54
Letter, Thos. Ryan, Acting Secretary, to Com- mission to the Five Civilized Tribes, dated September 16, 1904.....	55
Testimony of Jonas Bear.....	56
Testimony of Charley Simmer.....	57
Letter, Wm. O. Beall, Acting Commissioner, to the heirs of Barney Thlocco, dated February 9, 1906	58

Original Print

Letter, Tams Bixby, Commissioner, to the Secretary of the Interior, dated October 10, 1906	59	59
Letter, E. A. Hitchcock, Secretary, to Commissioner to the Five Civilized Tribes, dated December 13, 1906,	60	60
Objection of defendants to admission of Exhibit No. 7	61	61
Order sustaining objection to admission of Exhibit No. 7	62	62
Testimony of Hecktor Beaver.....	62	62
Testimony of Edward Merrick.....	66	66
Defendants' Exhibit No. 1—Same as Government's Exhibit No. 1.....	72	71
Defendants' Exhibit No. 2—Photographic reproduction of old census card No. 2866.....	72	72
Testimony of Edward Merrick, recalled for further cross-examination	73	73
Testimony of Phillip B. Hopkins.....	76	76
Government's Exhibit No. 8—Same as defendants' Exhibit No. 2.....	76	76
Government's Exhibit No. 9—Photographic reproduction of 1895 pay roll of Tuckabatchee Town..	80	79
Testimony of E. Hastain	84	85
Edward Merrick (recalled).....	89	89
John G. Lieber.....	89	89
Tams Bixby	94	94
Defendants' Exhibit No. 3—Letter, Commission to the Five Civilized Tribes to the Secretary of the Interior, dated March 3, 1902,.....	96	95
Testimony of Charles H. Drew.....	104	102
Government's Exhibit No. 10—Testimony in the matter of accounting for persons whose names appear on rolls who died prior to April 1, 1899... .	105	103
Testimony of Hecktor Beaver (recalled).....	110	108
Opinion of the court on the question of evidence,...	111	108
Colloquy between court and counsel as to evidence.	114	111
Government rests	119	115
Motion of defendants for dismissal of Government's bill and a decree in favor of defendants and intervenors	119	115
Order that decree may enter in favor of defendants dismissing the bill.....	119	115
Approval of statement of evidence.....	120	116
Decree	121	117
Order allowing intervention of J. W. McNeal and L. W. Baxter.....	121	117
Order allowing intervention of Dave Knight.....	122	118
Petition of Government for allowing appeal.....	123	119
Order allowing appeal.....	124	120
Assignment of errors.....	124	120
Citation, with acknowledgment of service.....	138	133

	Original. Pr.
Order of revivor in name of administrator of estate of Max H. Cohn.....	148
Precipe of Government for transcript.....	148
Precipe of J. W. McNeal and W. L. Baxter, suggesting additional portions of the record necessary for this appeal.....	156
Intervening petition of J. W. McNeal and L. W. Baxter....	157
Exhibit "D"—Oil and gas lease from Barnossee Unussee <i>et al.</i> to Black Panther Oil & Gas Co. and Howard Weber, dated November 21, 1914.....	171
Exhibit —, Oil and gas lease, Mattie Bruner <i>et al.</i> to C. G. Kiskaddon, dated August 15, 1913.....	175
Exhibit —, Oil and gas mining lease, D. L. Berryhill to Charley G. Kiskaddon, dated August 5, 1913.....	178
Exhibit —, Oil and gas mining lease, Jack Gouge <i>et al.</i> to C. G. Kiskaddon, dated August 22, 1913.....	180
Supplemental precipe of Government for transcript.....	184
Order of revivor in the name of the heirs of Max H. Cohn.....	190
Voluntary revivor	190
Order of enlargement of time for lodging record in United States circuit court of appeals.....	191
Certificate of clerk.....	191
Appearance for appellant.....	192
Order of argument and submission.....	192
Order to file, enter of record, and transmit certificate of questions	193
Certificate of questions to the Supreme Court of the United States	194
Statement of facts.....	195
Questions certified	205
Judge's certificate	205
Clerk's certificate to certified questions.....	206
Precipe by appellees for record.....	206
Clerk's certificate	207

a

Original.

TRANSCRIPT OF RECORD.

In the United States Circuit Court of Appeals, Eighth Circuit.

No. 4624.

UNITED STATES OF AMERICA, Appellant,

vs.

BESSIE WILDCAT, a Minor; SANTA WATSON, as Guardian of Bessie Wildcat, a Minor; Cinda Lowe, Louisa Fife, Annie Wildcat, Emma West, Martha Jackson, a Minor; Saber Jackson, as Guardian and Next Friend of Martha Jackson, a Minor; J. Coody Johnson, Aggie Marshall, Phillip Marshall, H. B. Beeler, Max H. Cohn, Black Panther Oil & Gas Company, a Corporation; Jack Gouge, Ernest Gouge, Mattie Bruner, Formerly Mattie Phillips; Jennie Phillips, Billie Phillips, D. L. Berryhill, William McCombs, Barney Unussee, Barnossee Unussee, Johnathan R. Posey, Charles F. Bissett, Taxaway Oil Company, a Corporation; F. L. Moore, J. S. Cosden, Fulhochee Barney, Siah Barney, Tommy Barney, Mollie Barney, Toney Chupko, Joseph Chupko, James C. Chupko, Eddie Larney, Polly Yargee, Sarkarye Chupko, Dick Larney, Moser Chupko, Tommy Chupko, Linda Harjo, Mary Jones, Loley Cooper, Celia Yahola, Charles S. Smith, Nora Watson, a Minor; John Smith, Lewis Smith, Lawrence Smith, Guy Smith, Ella Looney, née Smith; Edna Pike, née Smith; Pearle Smith Willis Smith, a Minor; J. S. Tilly, Guardian of Willis Smith, a Minor; Rannie Smith, Elizabeth Rhyne, née Smith; Rashie C. Smith, Montie Nunn, née Smith; Lou Smith, Howard Weber, Saber Jackson, Martha Simmons, Hannah Bullette, Robert Owen Burton, Nathaniel Mack Burton, Lydia Belle Wilson, née Burton; Samuel L. Burton, Abi L. Miller, née Burton; Minnie Ola Edwards, née Burton; Mary Eliza Burton, J. W. McNeal, L. W. Baxter, and Dave Knight, Appellees.

Appeal from the United States District Court for the Eastern District of Oklahoma.

Filed Dec. 21, 1915. John D. Jordan, Clerk.

b Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September Term, 1916, of said Court, Before the Honorable William C. Hook and the Honorable Walter I. Smith, Circuit Judges, and the Honorable Charles F. Amidon, District Judge.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

*Clerk of the United States Circuit Court
of Appeals for the Eighth Circuit.*

Be it remembered that heretofore, to-wit; on the twenty-first day of December, A. D. 1916, a transcript of record, pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Oklahoma, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit in a certain cause wherein the United States of America is Appellant, and Bessie Wildeat, a Minor, et al., are Appellees, which said transcript as prepared, printed and certified by the Clerk of said District Court in pursuance of an Act of Congress approved February 13, 1911, is in the words and figures following, to-wit:

1 In the United States District Court for the Eastern District of Oklahoma.

Pleas and proceedings before the Honorable Ralph E. Campbell, Judge of the District Court of the United States for the Eastern District of Oklahoma, presiding in the following entitled cause:

In Equity. No. 2017.

UNITED STATES OF AMERICA, Complainant,
vs.

BESSIE WILDCAT et al., Defendants.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017-E.

THE UNITED STATES OF AMERICA, Complainant,
v.

BESSIE WILDCAT, a Minor; SANTA WATSON, as Guardian of Bessie Wildeat, a Minor; Cinda Lowe, Louisa Fife, Annie Wildeat, Emma West, Martha Jackson, a Minor; Saver Jackson, as Guardian and Next Friend of Martha Jackson, a Minor; J. Coody Johnson, Aggie Marshall, Phillip Marshall, H. B. Beeler, Max H. Cohn, Black Panther Oil & Gas Company, a Corporation; Jack Gouge, Ernest Gouge, Mattie Bruner (formerly Mattie Phillips); Jennie Phillips, Billie Phillips, D. L. Berryhill, William McCombs, and Barnossee Unussee, Defendants.

Amended Bill of Complaint.

The United States of America, by D. H. Linebaugh, United States Attorney for the Eastern District of Oklahoma, by direction of the Honorable James C. McReynolds, Attorney General of the United States, and by leave of this honorable court first had, brings this amended bill against Bessie Wildeat, a minor, Santa Watson as

guardian of Bessie Wildeat, a minor, Cinda Lowe, Louisa Fife, Annie
Wildeat, Emma West, Martha Jackson, a minor, Saber Jack-
son as guardian and next friend of Martha Jackson, a minor,
J. Coody Johnson, Aggie Marshall, Phillip Marshall, H. B.
Beeler, Max H. Cohn, Jack Gouge, Ernest Gouge, Mattie Bruner
(formerly Mattie Phillips), Jennie Phillips, Billie Phillips, D. L.
Berryhill, William McCombs and Barnossee Unussee, each of the said
defendants being a citizen and resident of the State of Oklahoma,
and of the Eastern Judicial District thereof, and being within the
jurisdiction of this court; and against the defendant Black Panther
Oil & Gas Company, which is a corporation organized and existing
under and by virtue of the laws of the State of Oklahoma, and is a
citizen and inhabitant of the said state, and of the Eastern Judicial
District thereof; and thereupon your orator complains and says:

I.

That the said defendants Bessie Wildeat, a minor, Cinda Lowe,
Louisa Fife, Annie Wildeat, Emma West, Martha Jackson, a minor,
Aggie Marshall, Phillip Marshall, Jack Gouge, Ernest Gouge, Mattie
Bruner, nee Phillips, Jennie Phillips, Billie Phillips, D. L. Berry-
hill, William McCombs and Barnossee Unussee, all and singular,
claim to be, and your orator is informed and believes, and there-
fore avers the fact to be, that they are, the sole heirs at law of
Barney Thlocco, deceased (hereinafter more particularly referred
to), and all and singular they claim whatever right, title or interest
they claim to have in and to the land hereinafter described by virtue
of being heirs at law of the said Barney Thlocco, Deceased.

II.

Your orator further shows that for more than seventy years past
that portion of the territory belonging to the United States known
and designated as the Indian Territory and now forming a part of
the State of Oklahoma and within the Eastern Judicial District
thereof, has been occupied by the Choctaw, Chickasaw, Cherokee,
Creek and Seminole Tribes or Nation of Indians. That said above
named tribes of Indians formed and constituted a particular and dis-
tinct class of Indians, known and designated as the Five Civilized
Tribes, as distinguished from other Indians or Indian tribes within
the jurisdiction of the United States and under its care, protection
and control. That in many of the laws passed by the Congress of
the United States pertaining to said Five Tribes of Indians and to
their property they are referred to and designated as the Five
Civilized Tribes of Indians, and that wherever so designated
or referred to, in any of the Acts of Congress, were and are
included within the provisions of such acts in the same manner
and with like force and effect as though each of said Five Tribes
were particularly and separately designated and named therein.
That during all of the times mentioned herein the Creek Tribe of

Indians has maintained and still maintains tribal relations among themselves and towards complainant, and complainant has at all times mentioned herein, in dealing with the said tribes, recognized such tribal relations. That complainant has at all times mentioned herein and still maintains an Indian Agent for said tribes of Indians, who has supervision and control over the tribal property belonging to said Creek Tribe of Indians. That the Creek Tribe of Indians still has a large amount of tribal property and unallotted lands belonging to the members of said tribe of Indians which is still under the control and management of the complainant.

III.

Your orator further shows that under and by virtue of the existing treaties between complainant and the Creek Tribe of Indians, and by virtue of the several Acts of Congress passed in relation to the affairs and property of the Five Civilized Tribes of Indians, the United States government has always and now does assume the relation of guardian and trustee of the property of the Indian tribes and members thereof, constituting the Five Civilized Tribes. That its political department has always declared and now declares such relation to exist between complainant and said tribes of Indians, and especially the Creek tribe, in so far as the same relates to the members and property of said tribes of Indians.

That complainant, under and by virtue of the provisions of an Act of Congress passed and approved June 28, 1898, and by virtue of the several Acts of Congress supplemental thereto and amendatory thereof, and particularly the Acts of Congress passed and approved March 1, 1901, and June 30, 1902, assumed and undertook the duty of allotting in severalty to the various members and freedmen and enrolled citizens and freedmen of said Creek Tribe or Nation of Indians, the lands belonging to said tribe of Indians. That the work of allotting the tribal lands of the Creek Tribe or Nation of Indians is still in progress by complainant, and is, as yet, uncompleted and that by virtue of complainant's right and duty as a sovereign and governing power of said tribe of Indians, and for the purpose of discharging its full duty and obligation towards said tribes

of Indians, and fully executing, carrying out and discharging
4 its duty in relation to the allotment in severalty of the lands
of said tribe of Indians, to the duly enrolled members thereof,
according to the true spirit, intent and purpose of said trust, com-
plainant brings and prosecutes this action in its own behalf and in
behalf of the Creek Tribe or Nation of Indians.

IV.

Your orator further shows that the following described lands, to-wit:

The northwest quarter of section 9, in township 18 north, range 7 east,

was, on the first day of April, 1899, and at all the times hereinafter mentioned, and still is, a part of the land belonging to the Creek Nation of Indians as public and unallotted domain, subject to be allotted to lawfully enrolled members and citizens of the Creek Nation by complainant, under and by virtue of, and in accordance with, the terms and proceedings of the Acts of Congress passed and approved March 1, 1901, and June 30, 1902.

V.

Your orator further shows that by virtue of the authority conferred upon the Commission to the Five Civilized Tribes under the Acts of Congress passed and approved June 28, 1898, March 1, 1901, and June 30, 1902, as amended by the several acts of Congress supplemental thereto and amendatory thereof, said Commission to the Five Civilized Tribes, acting under the supervision of the Secretary of the Interior, was charged with the duty of determining who were entitled under the said acts of Congress to be enrolled as citizens and freedmen of the Creek Nation, and with the duty of surveying and allotting to the lawfully enrolled citizens and freedmen of said nation their respective due proportions of the allot-able land belonging to the said nation, of which the land hereinbefore described was a part.

VI.

Your orator further shows that one Barney Thlocco was in his lifetime a Creek Indian by blood; that he died at about the beginning of the year 1899 and prior to April 1st 1899, and he was not entitled to be enrolled as a citizen of the Creek Nation or to receive in allotment any part of its lands under the Acts of Congress hereinbefore referred to; that on or about the 24th day of May, 1901, the Commission to the Five Civilized Tribes caused the name of the said Barney Thlocco to be placed on the rolls of Creek citizens by blood which the said Commission was then preparing under the 5 aforesaid acts of Congress; that no hearing was held or investigation made by said Commission and no evidence of any kind was produced before or obtained or had by it with respect to the said Barney Thlocco's right under said acts of Congress to be so enrolled, and the said Commission neither gave nor caused to be given to the Creek Nation or its officers or any other person, any notice that said Barney Thlocco's name was about to be or would be so enrolled, and there was no controversy, contest or adverse proceeding of any kind by or before the said Commission with respect to the enrollment of the said Barney Thlocco or his right to be so enrolled.

Your orator avers that in so causing the name of the said Barney Thlocco to be placed upon the roll of Creek citizens by blood, the said Commission acted arbitrarily and summarily and without

knowledge, information or belief that said Barney Thlocco was living or dead on April 1st, 1899, but acted on a mere arbitrary and erroneous assumption wholly unsupported by evidence or information, that the said Barney Thlocco was living on April 1st, 1899, and was entitled to be enrolled by the said Commission under the Acts of Congress aforesaid.

Your orator further shows that the said Commission in so arbitrarily assuming that the said Barney Thlocco was living on April 1st, 1899, and in so causing his name to be placed on the roll of Creek citizens by blood, made a gross mistake of fact and of law, for your orator avers that the said Commission did not know nor did they have any evidence before them at the time they caused the name of the said Barney Thlocco to be so enrolled, either showing or tending to show whether the said Barney Thlocco was living or dead on April 1st, 1899, but if the true time of the death of the said Barney Thlocco as hereinbefore alleged had been known to the said Commission at or before the time of the enrollment of the said Barney Thlocco as a citizen of the Creek Nation who had been living on April 1st, 1899, entitled to receive a distributive share of the lands of the Creek Nation, he would not have been so enrolled by the said Commission.

Your orator avers its inability to set out here any evidence taken before or had by the said Commission respecting the question whether Barney Thlocco was living or dead on April 1st, 1899, for your orator says that no evidence whatever bearing in any way upon that question was taken before or had by the said Commission.

VII.

6 Your orator further shows that after the said arbitrary and erroneous enrollment of the name of the said Barney Thlocco as being the name of a Creek Indian who was living on April 1, 1899, and was entitled to receive a distributive share of the unallotted domain of the Creek Nation, and on to-wit: the 30th day of June, 1902, the said Commission to the Five Civilized Tribes, being wholly without evidence or information showing or tending to show whether Barney Thlocco had been living or dead on April 1, 1899, and solely by reason of his said arbitrary and erroneous enrollment, purported to allot in the name of the said Barney Thlocco, the tract of land hereinbefore described, and accordingly, on June 30, 1902, a certificate of allotment was issued in the name of the said Barney Thlocco as if he were, and under the arbitrary assumption on the part of the said Commission that he then was a living person, that assumption being founded on no evidence or information whatever as to the time of Barney Thlocco's death or as to whether Barney Thlocco was or was not a living person on April 1, 1899, or on June 30, 1902. A true copy of the said allotment certificate is hereto attached and made a part hereof as "Exhibit A."

VIII.

Your orator further shows that after the purported allotment of the above described land in the name of the said Barney Thlocco,

homestead and allotment patents purporting to convey the said land to the said Barney Thlocco were executed by the Principal Chief of the Creek Nation on March 11, 1903, and approved by the Secretary of the Interior on April 3, 1903. A copy of the said homestead and allotment patents are hereto attached, marked "Exhibits B" and "C" respectively, and are made a part of this amended bill of complaint. The land described in the said patents comprises the same land hereinbefore described, all of which is located in what is now Creek County in the Eastern Judicial District of the State of Oklahoma. Neither of said patents has ever been delivered to the said Barney Thlocco or to any other person but the same are in the possession of complainant through its officers and agents.

IX.

Your orator further shows that knowledge or information as to the mistake of fact made by the said Commission in causing the name of the said Barney Thlocco to be enrolled and in purporting to allot to him a portion of the lands of the Creek Nation was not had by complainant until after the purported allotting of the said land and the issuance of said allotment certificate and until after the preparation, execution and approval of the said patents; nor
7 did complainant know until thereafter that the said Barney Thlocco had died prior to April 1, 1899.

X.

Your orator further shows that on, to-wit: December 13, 1906, the Secretary of the Interior, by his executive order, caused the name of the said Barney Thlocco to be stricken from the roll of citizens by blood of the Creek Nation opposite No. 8592 on the said roll, and the said Barney Thlocco is not an enrolled citizen by blood or otherwise of the Creek Nation, and is not now, and has never been, entitled to an allotment of land therein because he has never been a lawfully enrolled citizen thereof, and because he died prior to April 1, 1899.

XI.

Your orator further shows that by reason of the error committed by the Commission to the Five Civilized Tribes by means and by reason of which an allotment was purported to be made to and in the name of the said Barney Thlocco, and the said allotment certificate was issued and the said patents executed and approved, and by reason of the recording of the said instruments in the office of the Commission to the Five Civilized Tribes, said instruments and proceedings constitute a cloud upon the Creek Nation's title to the said land, and the existence of the said cloud on the said title and the existence of the said allotment certificate and patents hinders and delays complainant in the performance of the duty imposed on it by law to allot and otherwise dispose of the lands, and to wind up the affairs of the Creek Nation.

XII.

Your orator further shows that it is informed and believes, and therefore avers the truth to be, that all and singular the defendants named in the caption hereof claim some right, title, interest or estate in and to the lands aforesaid, either by reason of being heirs at law of the said Barney Thlocco, deceased, or by reason of being guardians, grantees or lessees of the heirs or some of them, such claims being adverse to complainant and the Creek Nation, but the precise nature and extent of them being unknown to your orator; but your orator alleges the truth to be that none of the said defendants has, either at law or in equity, any right, title, interest or estate in or to the said land or any part thereof.

Forasmuch as complainant has no adequate remedy at law and can have no adequate relief except from a court of equity, and to the end, therefore, that the defendants may, if they can, show cause why complainant should not have the relief prayed for, your orator prays (subpennas having been heretofore issued and served upon the said defendants and their appearance entered herein) that the defendants be required to make a full disclosure and discovery of the matters aforesaid according to the best and utmost of their knowledge, remembrance, information and belief, and true, direct and perfect answers make to the matters hereinbefore charged but not under oath, answer under oath being hereby expressly waived.

Your orator further prays that this court decree that the allotment certificate and patents attached hereto as Exhibits "A," "B" and "C" are void and of no effect as instruments of conveyance, and that the same be cancelled; that all the defendants be decreed to have no right, title, interest or estate in and to the said land, and that the title to said land be quieted in complainant and the Creek Nation of Indians, and that whatever cloud is cast upon the title to the said land by reason of any of the matters aforesaid, be decreed by this court to be dissolved and that said land be decreed to be a part of the public and unallotted tribal land of the Creek Nation, subject to disposition by complainant in accordance with law, and that the enrollment of the said Barney Thlocco be cancelled, and that he, or any person claiming by, through or under him, including these defendants, be decreed by this court to be not entitled to participate in the disposition of the lands, moneys and other property of the Creek Nation, and that the defendants, all and singular, be forever enjoined from asserting any claim of title to, or interest in the tract of land hereinbefore described, adverse to the complainant and the Creek Nation, and that complainant have such other relief as the court shall deem equitable, premises considered.

D. H. LINEBAUGH,

United States Attorney, Eastern District of Oklahoma;

C. C. HERNDON,

Special Assistant to the United States Attorney,

Solicitors for Complainant.

[See insert herewith for photographic reproduction of Exhibit A, marked page 8½.]

741
W.S.
Wildcat } \$8 1/2

DEPARTM
COMMISSIONER TO
Muskogee

Allotments of land and homestead designations, as
Resolution of the Commission adopted, May 24, 19

Dated at Muskogee, Indian Territory this

30

of June 1902.

This is to certify
records pertaining to
taw, Chickasaw, Che-
and the disposition
and foregoing is a
ment made by the
name of Barney Tjo-
June 30, 1902.

C.H.D.

MENT OF THE INTERIOR
THE FIVE CIVILIZED TRIBES.
~~EX-CHIEF~~ LAND OFFICE.

as hereinafter described, are hereby made to the following named persons; in accordance with the
1902, viz:

Range	AREA		Appraised Value		Certificate No.	HOMESTEAD	Sec.	Typ.	Range	AREA		Appraised Value		Certificate No.	
	Acres	100	Dollars	Cents						Acres	100	Dollars	Cents		
7	160					SE $\frac{1}{4}$ of NW $\frac{1}{4}$	9	18	7	40					<i>right Q.</i>

dev

Tams Bixby

Acting Chairman

Commissioner

Thos. Ryan

Acting Commissioner to ,the
Five Civilized Tribes.

Muskogee, Oklahoma, October
28. 1

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EXHIBIT B.

omestead Deed. (39A.) Creek Indian Roll No. 8592.

The Muskogee (Creek) Nation, Indian Territory.

whom these presents shall come, Greeting:

ereas by the Act of Congress approved March 1, 1901 (31
861), agreement ratified by the Creek Nation May 25, 1901,
provided that all lands of the Muskogee (Creek) Tribe of
s, in Indian Territory, except as therein provided, should
otted among the citizens of said tribe by the United States
ission to the Five Civilized Tribes so as to give to each an
share of the whole in value, as nearly as may be, and
erens, it was provided by said Act of Congress that each citizen
elect, or have selected for him, from his allotment forty acres
d as a homestead for which he shall have a separate deed,

ereas, the said Commission to The Five Civilized Tribes, has
d that the land hereinafter described has been selected by or
half of Barney Thlocco, a citizen of said tribe, as a homestead,
, therefore, I, the undersigned, the Principal Chief of the
gee (Creek) Nation, by virtue of the power and authority
in me by the aforesaid Act of Congress of the United States,
anted and conveyed and by these presents do grant and con-
to the said Barney Thlocco all right, title and interest of the
gee (Creek) Nation and of all other citizens of said Nation
to the following described land, viz:

southeast quarter of the northwest quarter of section nine
ownship eighteen (18) north and range seven (7) east

Indian Base and Meridian, in Indian Territory, containing
(40) acres, more or less, as the case may be, according to the
States survey thereof, subject, however, to the conditions
ed by said Act of Congress and which conditions are that said
shall be non-taxable and inalienable and free from any im-
ance whatever for twenty-one years; and subject, also, to the
ons of said Act of Congress relating to the use, devise and
t of said land after the death of the said Barney Thlocco;
subject, also, to all provisions of said Act of Congress relating
raisement and valuation and to the provisions of the Act of
Congress approved June 30, 1902 (Public No. 200).

In witness whereof, I, the Principal Chief of the Muskogee
(Creek) Nation, have hereunto set my hand and caused the
Seal of said Nation to be affixed this 11th day of March,
1903.

P. PORTER,

Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior, L. R. S. Approved Apr. 3, 1903.
 Ethan A. Hitchcock, Secretary, (Seal) by Oliver A. Phelps, Clerk.
 Filed for record on the 11 day of April 1903, at 11 o'clock A. M.

EXHIBIT C.

Allotment Deed. (40A.) Creek Indian Roll No. 8592.

The Muskogee (Creek) Nation, Indian Territory.

To all whom these presents shall come, Greeting:

Whereas, by the Act of Congress approved March 1, 1901 (31 Stats., 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, it was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a separate deed, and

Whereas, the said Commission to The Five Civilized Tribes, has certified that the land hereinafter described has been selected by or on behalf of Barney Thlocco, a citizen of said tribe, as an allotment, exclusive of a forty-acre homestead, as aforesaid,

Now, therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid Act of the Congress of the United States have granted and conveyed and by these presents do grant and convey unto the said Barney Thlocco all right, title and interest of the Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following described land, viz:

11 The west half of the northwest quarter and the northeast
 quarter of the northwest quarter of section nine (9), town-
 ship eighteen (18) north and range seven (7) east

of the Indian Base and Meridian, in Indian Territory, containing One Hundred and Twenty (120) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to all provisions of said Act of Congress relating to appraisement and valuation and to the provisions of the Act of Congress approved June 30, 1902 (Public No. 200).

In witness whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 11th day of March, A. D. 1903.

P. PORTER,
Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior, L. R. S. Approved Apr. 3, 1903.
 Ethan A. Hitchcock, Secretary, (Seal) by Oliver A. Phelps, Clerk.
 Filed for record on the 11 day of April 1903 at 11 o'clock A. M.

Endorsed: Filed July 15, 1915, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 22nd day of September, A. D. 1915, the same being one of the days of a Special Session of the United States District Court for the Eastern District of Oklahoma, held at Muskogee, Oklahoma, Court met pursuant to adjournment. Present and presiding the Honorable Ralph E. Campbell, Judge.

Among the proceedings had on this day is the following:

In the United States Court for the Eastern District of Oklahoma.

No. 2017-E.

UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT et al., Defendants.

Nunc Pro Tunc Order Admitting Charles F. Bissett and Others as Defendants.

Now on this the 22nd day of September, 1915, it appearing to the court that heretofore, and on the 24th day of August, 1914, Charles F. Bissett and three others hereinafter named, were upon their own application permitted by the court to intervene and become parties defendant to this action and on said day filed their answer to the amended bill of complaint of the complainant, and it further appearing that no formal order was made and entered making said persons parties defendant;

It is now, as of the 24th day of August, 1914, ordered that the said Charles F. Bissett, Taxaway Oil Company, a corporation, F. L. Moore and J. S. Cosden have leave, and leave is hereby granted to them to intervene in this suit and to appear herein as defendants in the same manner and with like effect as if they were named in the amended bill of complaint as defendants having or claiming an interest.

RALPH E. CAMPBELL, Judge.

And, to-wit, on the 23rd day of October, A. D. 1914, the following proceeding was had in this cause, Honorable Ralph E. Campbell, Judge presiding.

In the District Court of the United States for the Eastern District of Oklahoma.

No. 2017-E.

UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT et al., Defendants.

Order Granting Leave to Fulholchhee Barney, Siah Barney, Tommy Barney and Mollie Barney to Intervene herein and File Answer and Cross-petition.

On this the 23rd day of October, 1914, coming on to be heard in Muskogee the application of Fulholchhee Barney, Siah Barney, Tommy Barney and Mollie Barney, for leave to intervene in this cause and to become parties defendant herein and to file an answer and cross-complaint, said parties appearing by Turner & Turner and Owen & Stone, their attorneys, and said plea of intervention having been heard by the court,

It is ordered and adjudged that leave be granted for the said parties to intervene herein and to become defendants in this cause.

And now comes said Fulholchhee Barney, Siah Barney, Tommy Barney and Mollie Barney, by their said attorneys, leave of the court having been first had and obtained, and file their answer to the complainant's bill of complaint and their cross-petition against the other defendants.

RALPH E. CAMPBELL, Judge.

And, to-wit, on the 22nd day of September, A. D. 1915, the following proceeding was had in this cause. Honorable Ralph E. Campbell, Judge presiding.

13 In the United States Court for the Eastern District of Oklahoma.

No. 2017-E.

UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT et al., Defendants.

Nunc Pro Tunc Order Admitting Howard Weber as Defendant.

Now on this the 22nd day of September, 1915, it appearing to the court that heretofore, and on the 28th day of October, 1914, Howard Weber was upon his own application permitted by the court to intervene and become a party defendant to this action and on said day

filed his answer to the amended bill of complaint of the complainant, and it further appearing that no formal order was made and entered making said Howard Weber a party defendant;

It is now, as of the 28th day of October, 1914, ordered that the said Howard Weber have leave, and leave is hereby granted him to intervene in this suit and to appear herein as a defendant in the same manner and with like effect as if he was named in the amended bill of complaint as a defendant having or claiming an interest; Provided, that this order is without prejudice to proceedings had prior to said 28th day of October, 1914, and said Howard Weber is so permitted to come into this action subject to all orders of the court in this action prior to October 28, 1914.

RALPH E. CAMPBELL, Judge.

And, to-wit, on the 2nd day of November, A. D. 1914, Charles F. Bisett, Toxaway Oil Company, a corporation, F. L. Moore and J. S. Cosden filed their Amended Intervening Petition herein, which is in words and figures as follows:

In the United States Court for the Eastern District of Oklahoma.

No. 2017.

UNITED STATES OF AMERICA Plaintiff,

v.

BESSIE WILPCAT et al., Defendants.

Amended Intervening Petition and Cross-petition of Charles F. Bissett, Toxaway Oil Company, F. L. Moore, and J. S. Cosden.

Come now Charles F. Bisett, Toxaway Oil Company, a corporation, F. L. Moore and J. S. Cosden, and by leave of court granted on October 28, 1914, on application of Charles F. Bisett, tender and file herein an amended intervening petition, and say that they are the owners of a valid oil and gas mining lease on the following described land situate in Creek County, Oklahoma, to-wit:

West half of southwest quarter of northwest quarter of section nine (9), township eighteen (18) north, range seven (7) east, containing 5 acres, more or less.

They further say that on or about the 19th day of May, 1913, the Commissioner to the Five Civilized Tribes issued an allotment certificate to one Jonathan R. Posey, covering the above described land, and that said Jonathan R. Posey was a citizen of the Creek Nation by blood, duly enrolled, his roll number being 9006; that this instrument was filed in the office of the Commissioner to the Five Civilized Tribes, and therein duly recorded, and was afterwards duly filed and recorded in the office of the Register of Deeds for Creek County, Oklahoma, on the 20th day of May, 1913, in book 89 at page 630. They further say that on or about the 19th day of May, 1913, the said Jonathan R. Posey duly executed and delivered an oil and gas

mining lease on the lands above described, extending for a period of fifteen years, or as long as oil or gas should be found in paying quantities on said land. It was further provided in said lease that one tenth of the oil produced from said land should be paid to the said Jonathan R. Posey as royalty, and One Hundred Fifty Dollars (\$150.00) per year, in advance, for each gas well producing gas, when the same is sold off the premises, and Twenty-five Dollars (\$25.00) per year for each gas-producing well when the gas therefrom was used on the premises; and it further provided that the lessees therein should commence and complete a well on said premises within two years from the date thereof, or pay at the rate of One Dollar (\$1.00) per acre for each additional year until said well was completed.

That said oil and gas mining lease was delivered to Theodore E. Stidham and Joseph E. Kirkbride, and accepted by them, it being stipulated therein that said Stidham should own one-sixteenth of the working interest and the said Joseph E. Kirkbride should own fifteen-sixteenths thereof.

That on or about the 14th day of June, 1913, the said Theo. E. Stidham sold and assigned, by writing, to said Joseph E. Kirkbride, all of his right, title and interest in said leasehold estate.

That on or about the 19th day of May, 1913, said Joseph E. Kirkbride, by an instrument in writing, duly signed, acknowledged and delivered a transfer of three-fourths of his interest in and to the oil and gas mining lease above referred to, to F. L. Moore, J. S. Cosden and Toxaway Oil Company, a corporation, the said Kirkbride retaining a one-fourth interest therein. Said assignment was filed for record in the office of the Register of Deeds for Creek County, Oklahoma, on May 8, 1914, and is recorded in book 99 at page 394.

They further say that on or about the 15th day of March, 15 1914, an execution was issued from the District Court of Creek County, Oklahoma, in accordance with the valid judgment of said District Court, in a proceeding wherein Edward O'Farrell was plaintiff and Joseph E. Kirkbride was defendant, and that on or about the 19th day of March, 1914, said execution was levied upon the oil and gas mining lease in the name of said Kirkbride, and is this property, and the same was duly appraised as is required by law, and said property was sold to the highest and best bidder, after being duly advertised, and Charles F. Bisett, being the highest and best bidder, was declared the purchaser thereof and a deed and bill of sale thereto was signed, acknowledged and delivered by Henry Clay King, the duly elected and qualified sheriff of Creek County, Oklahoma, on the 5th day of July, 1914, said sale being duly confirmed by an order duly made and entered on the 15th day of July, 1914.

These interveners further say that afterwards, by contracts in writing duly made and entered into, the conflicting interests of Charles F. Bisett, Toxaway Oil Company, F. L. Moore and J. S. Cosden and Joseph E. Kirkbride were fixed and agreed upon, and that Charles F. Bisett assigned, transferred and conveyed to the Toxaway Oil Company, F. L. Moore and J. S. Cosden each an undivided one-fourth interest in said oil and gas mining lease, and that the Toxa-

way Oil Company now owns a one-fourth interest therein, F. L. Moore owns a like interest, and the said J. S. Cosden a like interest, each being the owner of an undivided one-fourth part of the working interest in said lease.

These interveners further say that the alleged heirs of Barney Thlocco have no interest in said five acres above described, or in the oil and gas mining lease thereon, and say that the allotment to Barney Thlocco and the patent issued in pursuance thereof were issued to Barney Thlocco through gross fraud and mistake perpetrated upon the agents of the United States Government having in charge the enrollment of citizens of the Creek Nation and the allotting of lands to said citizens, and they allege that Barney Thlocco was not alive on the first day of April, 1899, and was therefore not entitled to enrollment or allotment, and that the deeds of allotment and allotment certificates made in his favor under which the heirs of Barney Thlocco now claim were nullities and never vested in Barney Thlocco, nor in any of his heirs, any title, legal or equitable, to the lands in controversy.

They further say that a judgment of this court has determined that Barney Thlocco was not entitled to allotment, and that the judgment of this court was not void, but merely voidable, and was afterwards set aside by this court, and that between the rendition 16 of said judgment and the setting aside of the same, Jonathan R. Posey was allotted the lands above described.

They further say that the order appointing the receiver herein was made without the knowledge or consent of these interveners, and when they were not before the court by any process, actual or constructive, and that the court had no jurisdiction to appoint a receiver for the five acres above described, and said receiver had no right or authority to lease any of the lands herein described to the Black Panther Oil Company or to any one else, and that the lease to the Black Panther Oil Company and all interest acquired by persons claiming under it are void as to these interveners and as to the said Jonathan R. Posey.

They further say that if, at the time Barney Thlocco was allotted the lands above described, the allotment was purely arbitrary, no application was filed for allotment, no hearing was had, no evidence heard, and that there was in fact no determination, judicial or otherwise, that said Thlocco was alive on April 1, 1899.

They further say that at the time a receiver was appointed herein, and at the time the lease was made to the Black Panther Oil Company, said Black Panther Oil Company had actual and constructive notice of the rights of said Posey, the rights of said Kirkbride, and of the rights of all of these interveners.

These interveners further say that said Black Panther Oil Company and those claiming under the void lease above referred to have entered upon said land and removed therefrom great quantities of oil, and have sold the same and have appropriated the proceeds thereof to their own use.

These interveners ask that this intervening petition be treated as a cross-petition and cross-complaint against the United States and all

the defendants in this case, and that on final hearing, the lease to the Black Panther Oil Company be set aside and held for naught; that the receiver be discharged and the Black Panther Oil Company and the receiver and all persons claiming under them be required to account to these interveners for all oil taken and removed from said premises, and that said interveners be adjudged and decreed to be the owners of a valid oil and gas lease on said lands, according to the tenor of the written lease above referred to, and that their title thereto be quieted and that they recover their costs herein, and for all other proper legal and equitable relief.

SHERMAN, VEASEY & O'MEARA,
Attorneys for Interveners, Charles F. Bisett,
Toxaway Oil Company, F. L. Moore, and J. S. Cosden.

17 STATE OF OKLAHOMA,
County of Tulsa, ss:

Charles F. Bisett, being duly sworn, states on oath that he is one of the intervenors and cross-petitioners in the foregoing cause; that he has read the above and foregoing amended intervening petition and cross-petition, and knows the contents thereof, and that the matters and things therein set forth are true as he is informed and verily believes.

CHAS. F. BISETT.

Subscribed and sworn to before me this 31st day of October, 1914.
[SEAL.]

ETHEL K. CHILDERS,
Notary Public.

My commission expires Oct. 13, 1918.

Endorsed: Filed Nov. 2, 1914, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 22nd day of September, A. D. 1915, the following proceeding was had in this cause. Honorable Ralph E. Campbell, Judge presiding.

In the United States Court for the Eastern District of Oklahoma.

No. 2017-E.

UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT et al., Defendants.

Nunc Pro Tunc Order Admitting Johnathan R. Posey as a Defendant.

Now on this the 22nd day of September, 1915, it appearing to the court that heretofore, and on the 4th day of November, 1914, John-

R. Posey was upon his own application permitted by the court to intervene and become a party defendant to this action and on said day filed his answer to the amended bill of complaint of the complainant, and it further appearing that no formal order was made entered making said person a party defendant; it is now, as of the 4th day of November, 1914, ordered that the Johnathan R. Posey have leave, and leave is hereby granted to him to intervene in this suit and to appear herein as a defendant in the same manner and with like effect as if he were named in the amended bill of complaint as a defendant having or claiming an interest.

RALPH E. CAMPBELL, *Judge.*

And, to-wit, on the 4th day of November, A. D. 1914, Johnathan Posey filed his Answer and cross-petition herein, which is in words and figures as follows:

In the United States District Court for the Eastern District
in the State of Oklahoma.

(No.) 2017.

UNITED STATES OF AMERICA

v.

BESSIE WILDCAT and SANTA WATSON, Guardian of Bessie Wildcat; Cinda Lowe, Louisa Fife, Annie Wildcat, Emma West, Martha Jackson, a Minor; Saber Jackson, Guardian and Next Friend; J. Coody Johnson, Aggie Marshall, Phillip Marshall, H. B. Beeler, Max H. Cohn, Black Panther Oil and Gas Company, a Corporation; Jack Gouge, Ernest Gouge, Fullochee Barney, Mattie Bruner, Tee Phillips, Jennie Phillips, Billie Phillips, D. L. Berryhill, William McCombs, Barnossee Unussee, Siah Barney, Tommy Barney, Mollie Barney, Howard Weber, Charles F. Blissett, Toxaway Oil Company, by E. R. Kemp, President; F. L. Moore, J. S. Cosden, and Johnathan R. Posey, Defendants and Intervenors.

Petition and Cross-petition of Johnathan R. Posey.

Comes now Johnathan R. Posey, a resident of the State of Texas, and having been on the 28th day of October, 1914, by order of court, made a party defendant in the above named and numbered cause, now enters his appearance in said cause and files this as his answer and cross-bill.

I.

For his answer this defendant admits that all the allegations in the complaint of plaintiff are true.

II.

For his cross-bill herein this defendant admits that all the allegations in the "Amended Intervening Petition and Cross-petition" of Charles F. Blissett, Toxaway Oil Co., F. L. Moore and J. S. Cosden are true and joins the said Charles F. Blissett et als. in their petition that a receiver be appointed in their petition filed under leave of the court granted on the 28th day of October, 1914.

III.

For his answer as to each and every one of the above named defendants, except Charles F. Blissett et als., named above, this defendant denies each and every allegation in the answers and cross-bills by them filed, and specifically denies that Barney Thlocco was duly enrolled citizen, by blood, of the Creek, or Muskogee, Nation and denies that he was entitled to enrollment in said Nation; and denies that he was entitled to an allotment of land by reason of his citizenship in said Nation; and denies that defendants, Bessie 19 Wildeat, or her guardian, Santa Watson, Cinda Lowe, Louise Fife, Annie Wildeat, Emma West, Martha Jackson, or her guardian, Saber Jackson, Aggie Marshall, Phillip Marshall, Jacob Gouge, Ernest Gouge, Mattie Bruner, nee Phillipps, Jennie Phillipps, Billie Phillips, D. L. Berryhill, William McCombs, Barnossee Unussee, Fullochee Barney, Siah Barney, Tommy Barney or Mollie Barney are the heirs of Barney Thlocco; and denies that they, or any one by or through them, takes any right, title or interest in or to the northwest quarter of section nine, township eighteen north, range seven east of the Indian Base and Meridian, by reason of the relationship to Barney Thlocco or as his heirs; and denies that Coody Johnson, H. B. Beeler, Max H. Cohn, the Black Panther Oil and Gas Company or Howard Weber acquired any right, title or interest therein by reason of the deeds, leases or assignments alleged to have been executed and delivered to them, or either of them, by the co-defendants as the heirs of Barney Thlocco.

IV.

For his cross-bill herein defendant states that Barney Thlocco was placed upon the roll opposite card number 3021, roll number 859, by the Commission to the Five Civilized Tribes and was, by said Commission allotted upon the following described land, situated in what is now Creek County, State of Oklahoma, to-wit:

The northwest quarter of section 9, township eighteen north, range seven east,

without authority from Barney Thlocco and without his knowledge or consent, and without any authority of law to so allot him, said allotment having been made on the 30th day of June, 1902; said allotment was made without any investigation as to whether Barne-

Thlocco was then living or as to whether he was living on the 1st day of April, 1899; that at a later date, to-wit: on the 11th day of March, 1903, the deeds to said land were executed by P. Porter, principal chief of the Creek Nation, and were approved by the Secretary of the Interior on the 3rd day of April, 1903, but that neither the certificate of allotment nor the deeds were ever delivered to Barney Thlocco, or to any one authorized to receive them for him or his heirs but said instruments were held in the files of the Commission to the Five Civilized Tribes, and are now in the possession of the complainant in this cause; that no title passed to Barney Thlocco, or his heirs by reason of the non-delivery of the certificate of allotment; that the name of Barney Thlocco was stricken from the roll of citizenship of the Creek Nation, by executive order of the Secretary of the Interior,

on the 13th day of December, 1906; that by this action the
20 Secretary of the Interior sought to cancel the allotment of the above described land to Barney Thlocco, but that no cancellation thereof was necessary as no notice of the filing, which had been done by the Commission arbitrarily and without authority of law, was ever given to Barney Thlocco, or to his heirs or legal representative, nor was any notice of the execution of the deeds ever given to the allottee, or his heirs or legal representative, and the above described land was at all times until about the 19th day of May, 1913, a part of the public domain of the Creek Nation and was subject to allotment by any citizen entitled to an allotment from the lands of the Nation; that this defendant is a duly recognized and enrolled citizen of the Creek Nation, enrolled opposite number 9006, and that on or about the 19th day of May, 1913, he, having been heretofore allotted 154.17 acres, applied to the Commissioner to the Five Tribes to have allotted to him as the remainder of his allotment the following described land:

The west half of the southwest quarter of the southwest quarter of the northwest quarter of section nine, township eighteen north, range seven east;

and that on said date a certificate of allotment was issued and delivered to him, and is now of record in the office of the Commissioner to the Five Tribes, a copy of said certificate being hereto attached, marked Exhibit "A" and made a part of this cross-bill, and that the certificate was filed for record and recorded in the office of the Register of Deeds for Creek County, on the 20th day of May, 1913, and is duly recorded in book 89, page 630; that since said date all the defendants in this cause have had full and complete notice of the claims of this defendant in and to said land.

Further pleading defendant states that he, on the 19th day of May, 1913, executed and delivered to Theodore E. Stidham and Joseph E. Kirkbride an oil and gas lease on said five acres, and that by various assignments Charles F. Blissett, Toxaway Oil Co., F. L. Moore and J. S. Cosden are now the owners of said lease and this defendant here and now joins in the "Amended Intervening Petition and Cross-petition" of said parties and in their prayer for the appointment of a receiver to take charge of the above mentioned five acres; that the

alleged heirs of Barney Thlocco have no interest in five acres above described, nor in the oil and gas mining lease thereon, and that the allotment to Barney Thlocco, the certificate of allotment and the deeds to said land were all made by reason of gross fraud practised on the Commission to the Five Tribes; that said instruments, by reason of the gross fraud hereinafter set out, practiced on the Commission and by reason of their non-delivery to Barney
21 Thlocco, or his heirs or legal representatives, conveyed no title either legal or equitable to said parties; that Barney Thlocco died prior to the first day of April, 1899, and therefore was not entitled to an allotment of land in the Creek Nation, and that all instruments attempting to allot said land to him, or in his name, were nullities and conveyed no title thereto and that the striking of his name from the rolls and the cancellation of his allotment by the Secretary of the Interior was notice to all claimants by, through or under him, subsequent to said cancellation, that his rights were disputed, and that none of the claimants through his heirs, nor the heirs, are innocent purchasers or holders of any title or interest in said land.

Defendant further states that a judgment of this court determined that Barney Thlocco was not entitled to an allotment, that said judgment was not void but merely voidable, and was afterward set aside, but, that while said judgment was in full force and effect the five acres claimed by this defendant was allotted to him.

Defendant further states that the appointment of the receiver in this cause was made without notice, and without the knowledge or consent of this defendant, and was made since the allotment certificate, on said five acres was delivered to this defendant and in utter disregard of the rights of this defendant, and with full and complete constructive notice of his rights; that the court had no right to appoint a receiver for said five acres and the receiver acquired no right, nor authority, by said appointment, to lease said five acres and that said lease conveyed no rights to the Black Panther Oil and Gas Company, nor to any one else, to develop said land for oil and gas, and that the lease to the Black Panther Oil and Gas Company, and as to all their privies as well, is void as to this defendant.

Defendant further states that the Black Panther Oil and Gas Company, and their privies, Howard Weber et als., have entered upon said land and have removed *therefore* great quantities of oil, and have sold same and appropriated the proceeds of said sale to their own use to the great damage of this defendant.

Wherefore this defendant prays that the certificate of allotment and the deeds to Barney Thlocco and all the deeds, leases and assignments from the heirs of Barney Thlocco to their co-defendants, and the lease to the Black Panther Oil and Gas Company and all assignments thereof, be set aside, cancelled and held for naught; that the Black Panther Oil and Gas Company and the receiver and all persons claiming, or to claim, any interest through them, or either of them, be required to account to this defendant for one-tenth
22 of all oil taken and removed from said premises, and that the receiver, as to said five acres be discharged, and that this de-

fendant be adjudged and decreed to be the owner and entitled to the immediate possession, and that he be ordered placed in possession, of said five acres and that his title to same be forever quieted *an* him and that all the defendants, except those holding under the lease from this defendant, be enjoined and restrained from asserting or claiming any right, title or interest in said land and from interfering with the possession and rights of this defendant therein, and for all other proper relief, whether legal or equitable, to which he may show himself entitled.

F. SCRUGGS,
Attorney for Johnathan R. Posey.

STATE OF OKLAHOMA,
Muskogee County, ss:

F. Scruggs, attorney for Johnathan R. Posey, having been first duly sworn, states that Johnathan R. Posey is a resident of the State of Texas and is not now in the State of Oklahoma; that he, as attorney for Johnathan R. Posey, has read the foregoing answer and cross-bill, and knows the contents thereof, and that the matters and things therein set forth are true as he is informed and verily believes.

F. SCRUGGS.

Subscribed and sworn to before me this 4th day of October, 1914.

[SEAL.]

G. H. SWAN,
Notary Public.

My commission expires Oct. 10, 1917.

(Lien claimed: F. Scruggs.)

Endorsed: Filed Nov. 4, 1914, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 4th day of November, A. D. 1914, the following proceeding was had in this cause. Honorable Ralph E. Campbell, Judge presiding.

In the District Court of the United States for the Eastern District of Oklahoma.

In Equity. No. 2017.

THE UNITED STATES OF AMERICA, Complainant,

v.

CINDA LOWE, LOUISA FIFE, ANNIE WILDCAT, EMMA WEST, MARTHA JACKSON, a Minor, and Saber Jackson, as Guardian and Next Friend of the said Martha Jackson, a Minor, Defendants.

Order.

Now, on this the 4th day of November, 1914, comes on for hearing in the above entitled cause, the application for leave to intervene herein

by Toney Chupeo, Joseph Chupeo, James C. Chupeo, Eddie Larney, Polly Yargee, nee Larney, Tomy Chupeo, Sarkarye Chupeo, Dick Larney, a minor, Moser Chupeo, a minor, children of Micco Chupeo; Aggie Marshall, Linda Harjo, Mary Jones, children of Salley Larney; Loley Cooper, child of Cooper Chupeo and Celia Yahola, daughter of Johnnie Larney, deceased, all of the parties to this cause being present by their attorneys and the court being duly advised in the premises finds:

That said application to intervene should be granted; and that the applicants should be allowed to file their pleadings in this cause as such interveners.

It is therefore ordered and adjudged by the court that the said Toney Chupeo, Joseph Chupeo, James C. Chupeo, Sarkarye Chupeo, Polly Yargee, nee Larney, Tomy Chupeo, Eddie Larney, Dick Larney, a minor, Moser Chupeo, a minor, children of Micco Chupeo; Aggie Marshall, Linda Harjo, Mary Jones, children of Sallie Larney; Loley Cooper, child of Cooper Chupeo and Celia Yahola, daughter of Johnnie Larney, deceased, be and they are hereby allowed to intervene in this cause, and are hereby made parties defendant herein subject, however, to all prior orders of the court; said intervening defendants are allowed fifteen days from this date in which to plead.

RALPH E. CAMPBELL, Judge.

And, to-wit, on the 4th day of November, A. D. 1914, the following proceeding was had in this cause. Honorable Ralph E. Campbell, Judge presiding.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017. In Equity.

UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT et al., Defendants.

Order.

Now on this 4th day of November, 1914, same being a regular day of the special 1914, term of said court, this cause comes on for hearing upon the petition of Charles S. Smith, Nora Watson, a minor, Joe Smith, Lewis Smith, Lawrence Smith, Guy Smith, Ella Looney, Smith, Edna Pike, nee Smith, Pearl Smith, Willie Smith, a minor, J. S. Tilly, guardian of Willis Smith, a minor, Rannie Smith, Elizabeth Ryne, nee Smith, Rashie C. Smith, Montie Nunn, nee Smith and Lou Smith for leave to intervene and be made parties defendant in said cause, and the court having heard the petition and being advised in the premises:

It is ordered, adjudged and decreed that the above named

24 tioned Charles S. Smith, Nora Watson, a minor, John Smith, Lewis Smith, Lawrence Smith, Guy Smith, Ella Looney, nee Smith, Edna Pike, nee Smith, Pearl Smith, Willis Smith, a minor, J. S. Tilly, guardian of Willis Smith, a minor, Rannie Smith, Elizabeth Rhyne, nee Smith, Rashie C. Smith, Montie Nunn, nee Smith, and Lou Smith be made parties defendants in this cause, and that they be allowed 15 days from the date of this order to file their answers, either joint or several, to complainant's amended bill.

It is further ordered that the above named intervenors may have 15 days from this date to plead, either by way of answer or cross-complaint, against the other defendants in this cause.

RALPH E. CAMPBELL, *Judge.*

And, to-wit, on the 4th day of November, A. D. 1914, the following proceeding was had in this cause. Honorable Ralph E. Campbell, Judge presiding.

In the United States District Court in and for the Eastern District of Oklahoma.

No. 2017.

UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT et al., Defendants.

Order Appointing Guardian ad Litem of Defendant Bessie Wildecat.

This cause coming on to be heard on this the 4th day of November, 1914, upon the petition of Bessie Wildecat, a minor, for the appointment of a guardian ad litem for one of the defendants in the above entitled action and plaintiff in a cross complaint filed by her in the said action, and,

It appearing to the court that Santa Watson is a compe-ent and responsible person, and that he has consented to act as such guardian ad litem,

It is hereby ordered that the said Santa Watson be and he is hereby appointed guardian ad litem for the said Bessie Wildecat, a minor, and is authorized and directed to appear and defend the above entitled action on her behalf, and to prosecute the same under the cross-petition filed in said cause.

RALPH E. CAMPBELL, *Judge.*

And, to-wit, on the 5th day of November, A. D. 1914, the following proceeding was had in this cause. Honorable Ralph E. Campbell, Judge presiding.

In the District Court of the United States for the Eastern District
Oklahoma.

No. 2017. Equity.

UNITED STATES OF AMERICA, Complainant,
25 v.

BESSIE WILDCAT et al., Defendants.

*Order Appointing Guardian ad Litem for Martha Jackson
pro Tunc.*

This cause came on to the be heard on this the 5th day of November, 1914, on the motion of J. Coody Johnson for a nunc pro tunc order appointing Saber Jackson as guardian ad litem for Martha Jackson in this suit; and it appearing to the court that said Saber Jackson is the father and duly appointed guardian of said Martha Jackson and that said Martha Jackson is a minor under eighteen years of age; and it further appearing to the court that entry was made on the 28th of October, 1914, in this cause setting apart and pointing said Saber Jackson as such guardian ad litem, as on date was authorized by this court, it is now adjudged and ordered by this court that the said Saber Jackson be appointed guardian ad litem in this cause for said minor Martha Jackson and that order be entered and operate as of said 28th day of October, 1914.

RALPH E. CAMPBELL, Judge

And, to-wit, on the 13th day of November, 1914, the following proceeding was had in this cause. Honorable Ralph E. Campbell, Judge presiding.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017. In Equity.

THE UNITED STATES OF AMERICA, Complainant,
v.

BESSIE WILDCAT et al., Defendants.

Order Appointing Guardian ad Litem.

On this 13th day of November, 1914, it being made to appear to the court that Nora Watson and Willis Smith, heretofore made defendants in this cause, are minors under the age of fourteen years and that it is proper and necessary that a guardian ad litem be

pointed herein to represent said minors and to prosecute and defend in this behalf in this cause:

It is hereby ordered that J. F. Brett be and he is hereby appointed guardian ad litem for said Nora Watson and Willis Smith, minors, and is hereby authorized and directed to do and perform all things proper and necessary to prosecute and defend the interests of said minors as defendants in this cause.

RALPH E. CAMPBELL, *Judge.*

26 And, to-wit, on the 23rd day of November, A. D. 1914, the following proceeding was had in this cause. Honorable Ralph E. Campbell, Judge presiding.

In the District Court of the United States for the Eastern District of Oklahoma.

No. 2017-E.

THE UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT, a Minor; SANTA WATSON, as Guardian of BESSIE WILDCAT, a Minor; Cinda Lowe, Louisa Fife, Annie Wildcat, Emma West, Martha Jackson, a Minor; Saber Jackson, as Guardian and Next Friend of Martha Jackson, a Minor; J. Coody Johnson, Aggie Marshall, Phillip Marshall, H. B. Beeler, Max H. Cohn, Black Panther Oil & Gas Company, a Corporation; Jack Gouge, Ernest Gouge, Mattie Bruner (Formerly Mattie Phillips), Jennie Phillips, Billie Phillips, D. L. Berryhill, William McCombs, and Barnossee Unussee, Defendants.

Order.

Upon the application of Saber Jackson to be allowed to intervene as a party defendant in the above cause.

It is ordered that said Saber Jackson be allowed to intervene and to file his answer and cross-petition therein within ten days from this date upon the condition expressly made and no other, that said Saber Jackson is bound by all of the orders and proceedings heretofore taken in this cause in as full a manner and as completely as though he had been an original party defendant herein.

Dated Nov. 23rd, 1914.

RALPH E. CAMPBELL, *Judge.*

And, to-wit, on the 23rd day of November, A. D. 1914, the following proceedings were had in this cause. Honorable Ralph E. Campbell, Judge presiding.

In the United States District Court for the Eastern District
Oklahoma,

No. 2017. In Equity.

THE UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT et al., Defendants.

*Order Granting Leave to Martha Simmons et al. to Intervene
Making Them Parties Defendant.*

On this the 23rd day of November, 1914, it being a regular day of a term of said court, came on to be heard the application of Martha Simmons and Hannah Bullet, to be allowed to intervene 27 in the above stated cause, by being made parties defendant in said cause, and said application being heard and understood by the court,

It is hereby considered and ordered by the court that the said Martha Simmons and Hannah Bullet, be and they are hereby made parties defendant to said above stated cause and be and hereby granted ten days from the date of this order in which to file their answer and cross bill in said cause.

Provided, however, that this order is granted with the express condition that the said Martha Simmons and Hannah Bullet, defendants in said cause consent to and are to be subject to all process orders made by the court in said cause,

RALPH E. CAM-BELL, Judge.

And, to-wit, on the 22nd day of September, A. D. 1915, the following proceeding was had in this cause. Honorable Ralph Campbell, Judge presiding.

In the United States Court for the Eastern District of Oklahoma

No. 2017-E.

UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT et al., Defendants.

*Nunc pro Tunc Order Admitting Robert Owen Burton and Others
as Defendants.*

Now on this the 22nd day of September, 1915, it appearing to the court that heretofore, and on the 4th day of May, 1915, Robert Owen Burton and six others hereinafter named, were upon their own application permitted by the court to intervene and become parties defendant to this action and on said day filed their answer to the amended bill of complaint of the complainant by joining in the joint answer of certain of the defendants and intervenors, and it further appearing that no formal order was made and entered making said persons parties defendant;

It is now, as of the 4th day of May, 1915, ordered that the said Robert Owen Burton, Nathaniel Mack Burton, Lydia Belle Wilson, nee Burton, Samuel L. Burton, Abi L. Miller, nee Burton, Minnie Ola Edwards, nee Burton and Mary Eliza Burton have leave, and leave is hereby granted to them to intervene in this suit and to appear herein as defendants in the same manner and with like effect as if they were named in the amended bill of complaint as defendants having or claiming an interest, provided, that this order is without prejudice to proceedings had prior to said 4th day of May, 1915, and said parties are so permitted to come into this action subject to all orders of the court in this action prior to May 4, 1915.

RALPH E. CAMPBELL, Judge.

28 And, to-wit, on the 4th day of May, A. D. 1915, the defendant herein filed joint answer, which is in words and figures as follows:

In the United States District Court for the Eastern District of Oklahoma.

No. 2017. Equity.

THE UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT et al., Defendants.

Answer of All the Defendants and Interveners Herein Who Oppose the Attempted Cancellation of the Enrollment and Allotment of Barney Thlocco, Deceased, to-wit, Bessie Wildcat, a Minor; Santa Watson, as Guardian of Bessie Wildcat; Cinda Lowe, Louisa Fife, Annie Wildcat, Emma West, Martha Jackson, a Minor; Saber Jackson, as Guardian and Next Friend of Martha Jackson, a Minor; J. Coody Johnson, Aggie Marshall, Phillip Marshall, H. B. Beeler, Max H. Cohn, Black Panther Oil & Gas Company, a Corporation; Mattie Bruner, Formerly Mattie Phillips; Jennie Phillips, Billie Phillips, D. L. Berryhill, William McCombs, Barnossee Unussee, Fulhohchee Barney, Siah Barney, Tommy Barney, Mollie Barney, Toney Chupko, Joseph Chupko, James C. Chupko, Eddie Larney, Polly Yargee, nee Larney; Tommy Chupko, Sarkarye Chupko, Dick Larney, a Minor; Moser Chupko, a Minor; Linda Harjo, Mary Jones, Loley Cooper, Hannah Bullette, Martha Simmons, Charles F. Smith, John Smith, Louis Smith, Lawrence Smith, Guy Smith, Ella Looney, nee Smith; Edna Pike, nee Smith; Pearl Smith, Nora Watson, and Willis Smith, Minors; Rannie Smith, Elizabeth Rhyne, nee Smith; Rashie C. Smith, Montie Nunn, nee Smith; Lou Smith, Howard Weber, Saber Jackson, Jack Gouge, and Earnest Gouge, Robert Owen Burton, Nathaniel Mack Burton, Lydia L. Wilson, nee Burton; Samuel L. Burton, Abi L. Miller, nee Burton; Minnie Ola Edwards, nee Burton, and Mary Eliza Burton.

Come now the following named defendants and interveners, the same being all of the parties hereto who oppose the attempted can-

cellation of the enrollment and allotment of Barney Thlocco, deceased, to-wit: Bessie Wilcat, a minor, Santa Watson, as guardian of Bessie Wilcat, Cinda Lowe, Louisa Fife, Annie Wilcat, Emma West, Martha Jackson, a minor, Saber Jackson as guardian and next friend of Martha Jackson, a minor, J. Coody Johnson,
29 Aggie Marshall, Phillip Marshall, H. B. Beeler, Max H. Cohn, Black Panther Oil & Gas Company, a corporation, Mattie Bruner, formerly Mattie Phillips, Jennie Phillips, Billie Phillips, D. L. Berryhill, William McCombs, Barnosee Unussee, Fulhohchee Barney, Siah Barney, Tommy Barney, Mollie Barney, Toney Chupko, Joseph Chupko, James C. Chupko, Eddie Larney, Polly Yargee, nee Larney, Tommy Chupko, Sarkarye Chupko, Dick Larney, a minor, Moser Chupeco, a minor Linda Harjo, Mary Jones, Loley Cooper, Hannah Bullette, Martha Simmons, Charles F. Smith, John Smith, Louis Smith, Lawrence Smith, Guy Smith, Ella Looney, nee Smith, Edna Pike, nee Smith, Pearl Smith, Nora Watson and Willis Smith, minors, Rannie Smith, Elizabeth Rhyne, nee Smith, Rashie C. Smith, Montie Nunn, nee Smith, Lou Smith, Howard Weber, Saber Jackson, Jack Gouge, Earnest Gouge, and Robert Owen Burton, Nathaniel Mack Burton, Lydia Bell Wilson, Samuel L. Burton, Abi L. Miller, Minnie Ola Edwards, Mary Eliza Burton, and for their answer to the Amended Bill of the United States, say:

I.

That said Bill of Complaint does not state facts sufficient to sustain a cause of action on behalf of complainant or to entitle complainant to the relief prayed for in said Bill of Complaint.

II.

That these defendants and interveners, hereinafter styled defendants, admit that they claim the land involved in this action, to-wit:

The northwest quarter of section nine (9), township eighteen (18) north, range seven (7) east,

as heirs of Barney Thlocco, deceased, or as assignees of said heirs, and aver that the respective interests of these defendants as such heirs or assignees and as to their rights between themselves are not pleaded in this answer, but the same are reserved as between themselves and will be determined upon further pleadings to be filed by them when the claim asserted by the United States is disposed of.

III.

That these defendants admit that for a long period of time last past, that portion of the Territory belonging to the United States, known and designated as Indian Territory, and now forming a part of the State of Oklahoma, and within the Eastern Judicial District thereof, has been occupied by the Choctaw, Chickasaw, Cherokee, Creek and Seminole tribes, or nations of In-

ns; that the land described in the Bill of Complaint herein is in
t portion of said Territory formerly occupied by the Creek Na-
a.

IV.

That these defendants admit that the complainant, under and by virtue of the Act of Congress passed and approved on June 28, 1898, and by virtue of other Acts of Congress supplemental thereto and mandatory thereto, and particularly the Acts of Congress passed and approved March 1, 1901, and June 30, 1902, assumed and undertook the duty of allotting, in severalty, to the various members and freedmen, and enrolled citizens and freedmen of the Creek Tribe or Nation of Indians, the lands belonging to said Tribe or Nation of Indians; and these defendants say that they are without knowledge as to whether the work of allotting the lands of the Creek Nation is still in progress or whether the same is incomplete. That these defendants are without knowledge as to whether the complainant brings and prosecutes this action in its own behalf or in behalf of the Creek Nation of Indians, by virtue of its right and duty as a sovereign power of said Tribe of Indians, and for the purpose of discharging its full duty to said Tribe of Indians, and for the purpose of executing, discharging and carrying out its duty in relation to the allotment in severalty in the lands of said Tribes of Indians to the duly enrolled members thereof according to the true intent of said trust; but these defendants admit that the complainant occupies some sort of a trust relation or guardianship concerning the unallotted lands of the Five Civilized Tribes of Indians, but have no knowledge of the exact duties of the complainant as such guardian or trustee, or the exact extent of complainant's rights and obligations as such.

V.

These defendants admit that said land was, on the first day of April, 1899, a part of the land belonging to the Creek Tribe or Nation, of Indians, and was a part of the public domain of the Creek Tribe of Indians, authorized to be allotted to the duly enrolled members and freedmen citizens of said Tribe of Indians, and under and by virtue of, and in accordance with the terms and provisions of the Act of Congress passed and approved March 1, 1901, and June 30, 1902; but these defendants deny that said land is now a part of the land belonging to the Creek Tribe, or Nation, of Indians, and deny that it is now a part of the public domain of the Creek Nation, or Tribe of Indians.

VI.

That these defendants admit that the Commission to the Five Civilized Tribes, acting under the supervision of the Secretary of the Interior, was charged with the duty of determining who were entitled under the laws of the United States to be enrolled as citizens of the Creek Nation and that said Commission was charged with the

duty of surveying and allotting to the lawfully enrolled citizens of the Creek Nation their respective and due portions of the allotable land of said Nation.

VII.

These defendants admit that one Barney Thlocco was, in his life time, a Creek Indian, by blood, and deny that he died prior to April 1, 1899, and deny that Barney Thlocco was not entitled to be enrolled as a citizen of the Creek Nation, or to receive in allotment any part of its lands as was set up in the Bill of Complaint; and these defendants admit that *on* or about the year 1901, the Commission to the Five Civilized Tribes caused the name of Barney Thlocco to be placed on the rolls of the Creek citizens, by blood, which said Commission was then preparing under the aforesaid Acts of Congress, but say that they have no information as to whether the enrollment took place on the 24th day of May, as alleged in said petition.

These defendants further say that in so causing the name of Barney Thlocco to be placed on the roll of citizens by blood of the Creek Nation that said Commission did not make a gross mistake of fact and of law, and did not act without evidence, and did not act arbitrarily, but that said Commission acted in accordance with law and upon the evidence which was before them at the time, and upon which they had a right to act. And these defendants say that on the first day of April, 1899, the said Barney Thlocco was a Creek Indian by blood, and was entitled under the Acts of Congress in this behalf to be duly enrolled upon the Creek Roll of Indians, and was so enrolled by said Commission created by Act of Congress in the discharge of their duties, and acting upon evidence satisfactory to them, and sufficient in law, and in fact, to authorize said Commission in placing the name of said Barney Thlocco on said rolls.

These defendants further say that they have no knowledge or information as to what notice, if any, was given by said Commission to the Creek Nation or its officers as to the proposed enrollment of Barney Thlocco, and in this connection they allege that under the

32 rules and regulations of said Commission, which were approved by the Secretary of the Interior, no notice was required to be given to said Creek Nation or any of its officers of the intended enrollment of any Creek citizen or of any proposed action of said Commission with reference to such Creek citizen, and they further allege that the said Barney Thlocco was enrolled and allotted in like manner as all other Creek citizens, regularly and in accord with the approved practice of said Commission.

VIII.

Further answering, those defendants say that they admit that on the 30th day of June, 1902, the said Commission to the Five Civilized Tribes allotted in the name of the said Barney Thlocco the land described in the petition, and issued a certificate of allotment therefor in the name of said Barney Thlocco; and these defendants further

dmit that the copy of said Allotment Certificate attached to said petition is a true and correct copy thereof; but these defendants say that it is not true that said allotment certificate was issued upon the arbitrary assumption that Barney Thlocco was a living person on April 1, 1899, and allege, as a matter of fact, the said Barney Thlocco was a living person on said date, and a Creek Indian by blood, and entitled to be placed on said rolls and to an allotment; and in this connection these defendants further allege that though it is true that said Barney Thlocco had died prior to the selection and allotment of said land, which was made on the 30th day of June, 1902, it was in accord with the usage, practice and custom of the Commission to the Five Civilized Tribes to so issue said allotment certificate in the name of the allottee for the use and benefit of the heirs, and that the said selection and allotment inured to the benefit of the heirs in like manner as if the allotment certificate had been issued in the name of the heirs.

IX.

These defendants admit the execution and approval of the patents conveying said allotment, as alleged in the Bill of Complaint, and admit that said patents were not delivered to Barney Thlocco, but in this connection they aver that immediately after the issuance of said patents they were duly and lawfully recorded by the Commission to the Five Civilized Tribes in the books of record provided by law for such purpose, and that said record operated as a delivery of the patents.

X.

That these defendants deny that any knowledge ever came to said Commission as to a mistake of fact made by said Commission
33 in causing the name of said Barney Thlocco to be enrolled and in allotting him the land above described, and they further aver that no mistake of fact was made by said Commission in that respect.

XI.

These defendants say that they are without knowledge as to whether, on the 13th day of December, 1906, the Secretary of the Interior by his order caused the name of Barney Thlocco to be stricken from the roll of Creek citizens, and in this connection they aver that if the name of the said Barney Thlocco was so stricken that it was illegally done, without due process of law, and without notice to any of the heirs of said Barney Thlocco, and without notice to any person who was entitled to notice, and said act was void.

XII.

That the Commission to the Five Civilized Tribes was, by various Acts of Congress and Treaties with the Creek Nation, vested with

full and complete power, authority and jurisdiction to enroll Creek citizens and to allot the lands of said Nation to the enrolled members of the tribe, and the acts of said Commission in enrolling said Barney Thlocco and in allotting said land in his name for the benefit of his heirs, were judicial in their nature and that the said Commission to the Five Civilized Tribes having, as hereinbefore set forth, enrolled said Barney Thlocco, and having made said allotment in the usual and ordinary course of the authorized work of said Commission and upon such hearing and evidence as the Commission deemed satisfactory, and the work of said Commission having been approved by the Secretary of the Interior, said enrollment, allotment and patent cannot be cancelled, nor can the issue of fact upon which the Commission placed the name of said Barney Thlocco upon the approved Creek roll be tried again, and these defendants say that this court is without authority of law or jurisdiction to reopen or retry the question of fact sought to be put in issue by the United States. They further allege that by Act of Congress said final roll of the Creek Nation approved by the Secretary of the Interior has been made final and conclusive and not subject to attack.

XIII.

And defendants further say that complainant *ought* not to have and recover herein because defendants aver and say, that the different causes of action upon which complainant predicated its bill are barred by the Federal Statute of Limitation of six years, being the 26th Statutes at Large, Section 8, 1099.

XIV.

And defendants further say that the patent of Barney Thlocco was issued on the 11th day of March, 1903, and recorded in the office of the Commission to the Five Civilized Tribes on the — day of —, 1903, more than thirteen years ago. That the complainant, with the full knowledge of all the facts, did not commence an proceeding to set aside, vacate or annul said patent until the institution of this suit, and defendants therefore say that complainant has been guilty of laches and that its failure to prosecute a suit to set aside and annul said patent has been such laches as ought to bar this action in a court of equity.

Wherefore, these defendants pray that the complainant's Amended Bill of Complaint be dismissed and that they may recover judgment, for their costs herein and all other proper relief.

SHEA & BLUE,
Attorneys for Howard Weber,
STUART, CRUCE & CRUCE,
Attorneys for Black Panther Oil and
Gas Company, a Corporation.

RAMSEY AND DE MEULES,

D. REPLOGLE,

*Attorneys for Bessie Wildcat, Cinda Lowe,
Louisa Fife, Annie Wildcat, Santa Watson,
as Guardian of Bessie Wildcat.*

MALCOM E. ROSSER,

WILLIAM S. COCHRAN,

Attorneys for H. B. Beeler.

J. COODY JOHNSON,

Attorneys for J. Coody Johnson.

JOHN DEVEREUX,

Attorneys for Saber Jackson.

TURNER & TURNER,

OWEN & STONE,

*Attorneys for Barnossee Unussee, Fulhohchee
Barney, Siah Barney, Tommy Barney, and
Mollie Barney.*

J. COODY JOHNSON,

*Attorneys for Martha Jackson and Saber
Jackson, as Guardian of said Martha Jackson.*

FURRY & MOTTER,

*Attorneys for D. L. Berryhill, Charles F. Smith,
Nora Watson, John Smith, Louis Smith,
Lawrence Smith, Guy Smith, Ella Looney,
Edna Pike, Pearl Smith, Willis Smith, Ran-
nie Smith, Elizabeth Rhyne, Rashie C.
Smith, Montie Nunn and Lou Smith.*

FRANKLIN & CAREY,

*Attorneys for Aggie Marshall, Toney Chupko,
Joseph Chupko, James C. Chupko, Eddie
Larney, Polly Yargee, Sarkarye Chupko,
Dick Larney, Moser Chupko, Tommy Chup-
ko, Linda Harjo, Mary Jones, Loley Cooper,
Phillip Marshall.*

ED HIRSCH,

Attorneys for Max H. Cohn.

HAZEN GREEN,

E. J. VAN COURT,

*Attorneys for Mattie Bruner, Billie Phillips,
Jennie Phillips, Jack Gouge, Ernest Gouge,
William McCombs.*

WM. A. COLLIER,

*Attorneys for Martha Simmons and
Hannah Bullett.*

DE ROOS BAILEY,

J. E. WYAND,

C. A. MOON,

*Attys for Robert Owen Burton, Nathaniel Mack
Burton, Lydia Bell Wilson, Samuel L. Bur-
ton, Abi L. Miller, Minnie Ola Edwards,
Mary Eliza Burton.*

Endorsed: Filed May 4, 1915. R. P. Harrison, Clerk U.S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 4th day of May, A. D. 1915, the Complainant, the United States of America, filed Motion to Strike the Answer of the Defendant, which is in words and figures as follows:

36 In the United States District Court for the Eastern District of Oklahoma,

No. 2017-E.

UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT et al., Defendants.

Motion to Strike.

Comes now the complainant by its solicitors of record and moves the court to strike the answer of all the defendants and in particular herein filed in this action on the 4th day of May, 1915, for the reason and upon the ground that said answer fails to set forth facts which in law to constitute any defense to the cause of action set forth in the amended bill of complaint.

D. H. LINEBAUGH,
United States Attorney

W. P. Z. GERMAN,
Special Assistant to the United States Attorney
Solicitors for Complainant.

R. C. ALLEN,
Creek National Attorney,
Associate Solicitor for Complainant.

Endorsed: Filed May 4, 1915. R. P. Harrison, Clerk U.S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 4th day of May, A. D. 1915, the following proceedings were had in this cause. Honorable Ralph E. Cross, Judge presiding.

k U. S. Dis-

In the United States District Court for the Eastern District of Oklahoma.

Complainant
ie Joint An-
s follows:

In Equity. No. 2017.

n District of

UNITED STATES OF AMERICA, Complainant,
v.

BESSIE WILDCAT et al., Defendants.

Order Overruling Motion to Strike Joint Answer of Defendants and Intervenors.

On this 4th day of May, 1915, came on to be heard the motion of the complainant, the United States of America, to strike the joint answer of the defendants and intervenors, Bessie Wildcat et al., and the court having heard *and* arguments of counsel and being advised in the premises,

It is ordered that said Motion to Strike the Joint Answer of the defendants and intervenors, be and the same is hereby overruled. To which action of the court in overruling said motion, the complainant the United States of America, duly excepted and the exceptions were allowed by the court.

37 And, to-wit, on the 30th day of October, A. D. 1915, the complainant filed Statement of the Evidence, which is in words and figures as follows:

No. 2017-E.

In the United States Court for the Eastern District of Oklahoma.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Comes now the appellant by its solicitors and states that the following constitutes its statement in simple and condensed form of the evidence admitted, and that offered and rejected, and of all the proceedings at the final hearing of this cause in the United States Court for the Eastern District of Oklahoma, the testimony of the witnesses being stated in the most part in narrative form, all of which appellant desires shall be included in the record on appeal, and where in said statement appellant has by quotation stated testimony in the exact words of the witnesses, the appellant desires that

all such quoted testimony be so reproduced and prays the court to direct.

Wherefore, appellant prays that said statement be approved.

D. H. LINEBAUGH,

United States Attorney

W. P. Z. GERMAN,

Special Assistant to the United States Attorney

Solicitors for Appellees

In the United States Court for the Eastern District of Oklahoma

No. 2017-E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Appellant's Condensed Statement of the Evidence and Proceedings at the Final Hearing of This Action.

Now on this the 5th day of May, 1915, at Muskogee, within the Eastern District of Oklahoma, the above entitled and numbered action came on to be heard for final trial before the Honorable Ralph E. Campbell, District Judge, presiding, and thereupon.

There appeared on behalf of the United States: D. H. Linebaugh, Esq., United States Attorney, W. P. Z. German, Esq., and Pinson, Esq., Special Assistant to the United States Attorney; R. C. Allen, Esq., National Creek Attorney;

And by consent of the solicitors for complainant at page 38 the permission of the court there also appeared on behalf of complainant: James A. Veasey, Esq., and A. A. Davidson, Esq.;

On behalf of the defendant, Johnathan R. Posey, F. S. Esq.;

On behalf of the defendants, Charles F. Bissett, Taxaway Oil Company, a corporation, F. L. Moore and J. S. Cosden; James A. Esq., and A. A. Davidson, Esq.;

And on behalf of the defendants and interveners who filed joint answer to the bill of complaint as amended: Messrs. Bell and de Meules and D. Reploggle, Esq., Messrs. Owen and Messrs. Stuart, Cruce and Cruce, Messrs. Franklin and Messrs. Rosser and Cochran, Ed Hirsh, Esq., Messrs. Le Stuart and Bell, Hazel Green, Esq., E. J. Van Court, Esq., B. Tally, Esq., Messrs. Furry and Motter, Messrs. Shea and Messrs. Bailey, Wyand and Moon, William J. Gregg, Esq., for Deverux, Esq., William A. Collier, Esq., and J. Coody Johnson representing their respective clients as indicated in their signatures to the said joint answer;

And thereupon evidence was introduced and proceeded herein as follows, to-wit:

to so By Mr. German: As Government's Exhibit No. 1, we offer in
evidence a certified copy of the census card of Barney Thlocco from
the office of the Dawes Commission.

By the Court: Let it be identified as it is offered.

By Mr. Stuart: No objection.

By the Court: It may be admitted.

By Mr. German: This shows, Your Honor, that the name of
Barney Thlocco appears opposite Roll No. 8592, listed as of May
24, 1901, on May 24, 1901. I don't suppose the descriptive feature
is important. It has a notation on it, a notation with reference to
the striking of the name from the roll which we will offer evidence
on later.

The said Exhibit No. 1, is in words and figures as follows:

[See insert herewith for photographic reproduction of Government's Exhibit No. 1, marked page 38½.]

Gov. Ex. 1. 2017 Eq. 5/5 /15

RESIDENCE:

POST OFFICE:

Ore

Dawes' Roll No.	NAME	Rei's Pe first Named	AGE	SEX.	BLOOD.	TRIBAL EN Year:
8592	Alaska, Barney		35	M	Fatt	1890
2						
3						
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12	741 R.P. Muskat	38 1/2				EN OF NOS. 85 APPROV OF INTERIO
13	SITIZP. CERT'D ISSUED FOR NO 18					No. 1 on No. 1 on No. 1 on mission
14	JUN 25 1902					
15						
16						
17						
18						

Greek Nation. GREEK Roll.

CARD NO. 3021

FIELD NO. 3456



39 Department of the Interior, Office of Superintendent for the
 Five Civilized Tribes, Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole tribes of Indians and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of Creek Indian census card No. 3021.

(Signed)

GABE E. PARKER,

Superintendent for the Five Civilized Tribes.

May 3, 1915. C. H. D.

By Mr. German: We now offer as Government's Exhibit No. 2 a certified copy of the roll in so far as it shows the name of Barney Thlocco.

The said Exhibit No. 2 is in words and figures as follows:

Gov. Ex. 2.

2017, Eq.—5/5/15.

Creek Roll, Indians by Blood.

Number.	Name.	Age.	Sex.	Blood.	Card No.
8592.	Thlocco, Barney.	35	M.	Full	3021

Stricken by order of Department, Dec. 13, 1906, (I. T. D. 22734-1906) Commissioner's File No. 55241-1906.

Department of the Interior, United States Indian Service, Office of Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the approved rolls of the citizens or members of the Five Civilized Tribes of Indians, and that the above and foregoing is a true and correct copy of that portion of one of said rolls as above described, covering the persons enrolled opposite the numbers indicated.

(Signed)

GABE E. PARKER,

Superintendent for the Five Civilized Tribes.

W. S. S. May 3rd, 1915.

[CLERK'S NOTE.—In the above exhibit the words "Thlocco Barney, 35, M., Full, 3021," have red lines running through the same.]

By the Court: Has that a notation on it in reference to the action of the Commission in 1906?

By Mr. German: It has.

By Mr. Stuart: We object to the notation of 1906 because it has no bearing on this branch of the controversy.

By the Court: I will hear you in support of the offer.
Whereupon argument was submitted to the court.
Whereupon an adjournment was taken until 2:00 o'clock P. M.

And thereafter court convened at 2:00 o'clock P. M. pursuant to adjournment and argument of counsel was resumed.

By the Court: This is a very important feature in this case and the determination of it in one way or the other will affect the case materially. I am going to take the night before I finally announce my rulings on the objection. Court will take a recess until tomorrow morning at 10:00 o'clock.

Whereupon court adjourned until 10:00 o'clock tomorrow morning.

And thereafter court convened at 10:00 o'clock May 6th, 1915, and the following proceedings were had:

By the Court: In the matter which was argued at length yesterday, gentlemen, involving the objection offered to the introduction of evidence in relation of the action of the Secretary in December, 1906, in attempting to strike the name of Barney Thlocco from the rolls, I have reached the conclusion that the objection is well taken. The finding of the Commission, as suggested yesterday, and judgment of the Commission, pursuant to which Barney Thlocco was enrolled, involved the finding that he had all the qualifications necessary to become an enrolled member of the Creek Tribe for the purpose of the distribution of this estate and allotment among the members of the tribe. In my judgment it was just as essential that the Commission investigate and determine the fact as to whether he was alive April 1, 1899, as it was that they determined that he had Indian blood or any of the other qualifications necessary to entitle him to enrollment. The very foundation of the title which the allottees in the Creek Tribes and other tribes get is the allottee's enrollment on the rolls of the tribe made pursuant to Acts of Congress for the very purpose of determining who were entitled to partake in the distribution of these lands and funds. The bill shows that Barney Thlocco was enrolled as a member of the Creek Tribe, which carries with it an allegation that the Commission adjudged that he was qualified for enrollment, not only by virtue of his blood but also by virtue of the fact that he was living on April 1, 1899; because the Commission were not permitted to enroll even members of Creek blood under the law unless they were alive April

1, 1899. Pursuant to this enrollment, judgment and finding by the Commission the certificate of allotment was issued

and patent was issued. Of course this imports that the Secretary of the Interior prior to the issuance of the allotment certificate and patent had approved the enrollment. When the patent was issued he approved the patent. It is alleged in the bill that by reason of the recordation of this patent in the office of the Commission to the Five Civilized Tribes it has become a cloud upon the title. It is alleged in the answer that this patent was recorded with the Commission to the Five Civilized Tribes. I think, as held

the Supreme Court in the Skelton-Dill case, that even assuming as the pleadings show, that when the patent was issued and the allotment certificate was issued Barney Thlocco was dead; by operation of law although the allotment certificate and patent issued in his name, by operation of law, the legal title to the land by virtue of the patent vested in his heirs. And that by recordation of that patent the legal title passed. Now after that, if that were true, then clearly after that the Secretary of the Interior could no more invalidate that patent and that title or affect it by proceeding to strike Thlocco's name from the roll, than he could invalidate a patent issued for public lands in the administration and disposition of the public lands under his charge, after patent had been issued, by reviewing some action of the Land Office which was pre-existent to issuance of the patent. It seems to me that the Secretary of the Interior after this patent was issued to Barney Thlocco, if he has a right in assuming that by operation of law it carried the legal title to the land to these heirs, it seems to me that by the issuance of this patent with the effect that it had, the Secretary was absolutely without authority so far as these particular lands are concerned, to make any further investigation or finding in an attempt to affect that title. It is suggested that there are still tribal funds for distribution. That in my judgment, is another question. The Secretary, as appears from the proof offered here and allegations made in the bill, has attempted to strike the name from the rolls. When tribal funds come to be distributed and these heirs shall insist upon their part of whatever tribal funds are now undistributed, together with other members of the tribe or other persons entitled to such distribution, that question will arise. It is not necessary to determine that here. It seems to me that the lands, inasmuch as they have been distributed by this patent, are in an entirely different class. I think the only place that that judgment of the Commission can be attacked is in a court with jurisdiction to consider it on either the ground that it was procured by fraud or in such a way as to amount to gross mistake of law or fact or gross mistake of law and fact on the part of the Commission. It is charged in the bill here that the Commission acted arbitrarily in making this enrollment, and without any evidence whatever as to whether Barney Thlocco was alive or dead April 1, 1899. In prior consideration of this matter, coming up on, I think, a motion to dismiss, I overruled the motion and held that if it were a fact that the Commission acted without any evidence whatever, that judgment would amount to a gross mistake of fact and law, and it, in my judgment, leaves the case here and the bill alleging that the Commission acted without any evidence whatever. In my judgment it devolves (upon) the Government to establish, to make a prima faciae case, as to that and to also show that Thlocco was not entitled to enrollment in order to succeed. The objection will be sustained and exception noted.

By Mr. German: Yes, Your Honor, we save an exception.

By Mr. Davidson: Might I ask the court one question? It may be necessary for us to have a clear idea of that in offering our proof.

Do I understand that the court holds that the action of the Secretary is a void act?

By the Court: So far as this land is concerned in my judgment it has no place in this hearing.

By Mr. Davidson: Now does that depend upon the want of notice?

By the Court: No, regardless of the question of notice. I think the Secretary after this patent was issued, so far as these lands—so far as this case is concerned was without authority to strike the name from the roll and thereby invalidate the patent and title, the very thing which is sought to be done by this action here.

By Mr. Davidson: For the reason that the acts of 1906 cured the trouble and operated to vest the title?

By the Court: In view of the various acts of Congress which I think pertain to this case the title passed to the heirs notwithstanding Thlocco was dead at the time the patent issued.

By Mr. Linebaugh: Following out the argument that we presented to the court, and at the proper time in the submission of our proof to make our record in this case, we would desire to present further observations on the question touched upon in argument, and that is that if Barney Thlocco was dead on April 1, 1899, then the Commission was without jurisdiction to enroll him. Further, that if he was dead at the time of the execution of the patent then the Commission and the Secretary under the law *was* without jurisdiction—making the allotment and executing the patent, *was* without jurisdiction to make the allotment to him and execute the patent to him.

43 I assume that in making our offers that question will probably present itself.

By the Court: Well, that was presented generally yesterday, yes.

By Mr. German: Your honor, may I inquire to what extent the ruling in sustaining the objection applies to the evidence which was offered. It was a certified copy of the roll, if you remember.

By the Court: Well, you alleged that he was enrolled by the Commission. That is admitted by the answer so that stands an admitted fact in this case that he primarily was enrolled. The objection to this Exhibit No. 2 which was offered, is sustained because there is a notation showing the name as stricken from the roll by action of the Secretary in 1906.

W. H. ANGELL produced and sworn as a witness on behalf of the complainant testified substantially as follows:

Direct examination of W. H. Angell:

My name is W. H. Angell. I am in charge of the land division in the office of the Superintendent for the Five Civilized Tribes, and for the last sixteen years have held numerous positions in the Indian office at Muskogee, being connected with the work of the Dawes Commission during that time. In the year 1902 beginning the latter part of June I had charge of the Creek enrollment division, and prior to that time I was connected with the allotment work, and in 1902 was familiar with the work of allotting lands to Creek citizens. I am

w in custody, subordinate to the Superintendent, of the records pertaining to the allotment of lands in the Creek Nation. There were allotments arbitrarily made in the Creek Nation and one can determine from the records whether a particular allotment was arbitrarily made.

Government's Exhibit No. 3 is a certified copy of the instrument under which the allotment described in it was made.

By Mr. German: We offer this in evidence as Government's Exhibit No. 3.

By the Court: If there is no objection it may be admitted.

By Mr. Stuart: I don't think so.

By the Court: It may be admitted.

Said Exhibit No. 3 is in words and figures as follows:

[See insert herewith for photographic reproduction of Government's Exhibit No. 3, marked page 44½]

act Book
age 4/12 | 30/6/02

Gov. Ex #3
5-6-15 no 2012

DEPARTM
COMMISSIONER TO
Miskogee G.F.

Allotments of land and homestead designations
the Resolution of the Commission.

CERTIFICATE No.	NAME	Attachment to Homestead Subdivision of	Sec.	Twp.
16986	Barney Phlocos	New 4	9	18

Dated at Muskogee Indian Territory, this 20
of June 1902

(over)

44

#3
- no 2012

50 A
EM 1-31-08

DEPARTMENT OF THE INTERIOR
~~MEMORANDUM~~ TO THE FIVE CIVILIZED TRIBES
CREEK LAND OFFICE.

team designations as hereinafter described, are hereby
commissioned May 24,

his 20

— day

1

ver)

This is to certify that I am the
records pertaining to the enro
Choctaw, Chickasaw, Cherok
es of Indians and the dispos
es, and that the above and for
copy of an arbitrary allotme
to the Five Civilized Tribes
eeo, Creek by blood, Roll Num
Ryan, Acting Commissione

DR

ILIZED TRIBES.

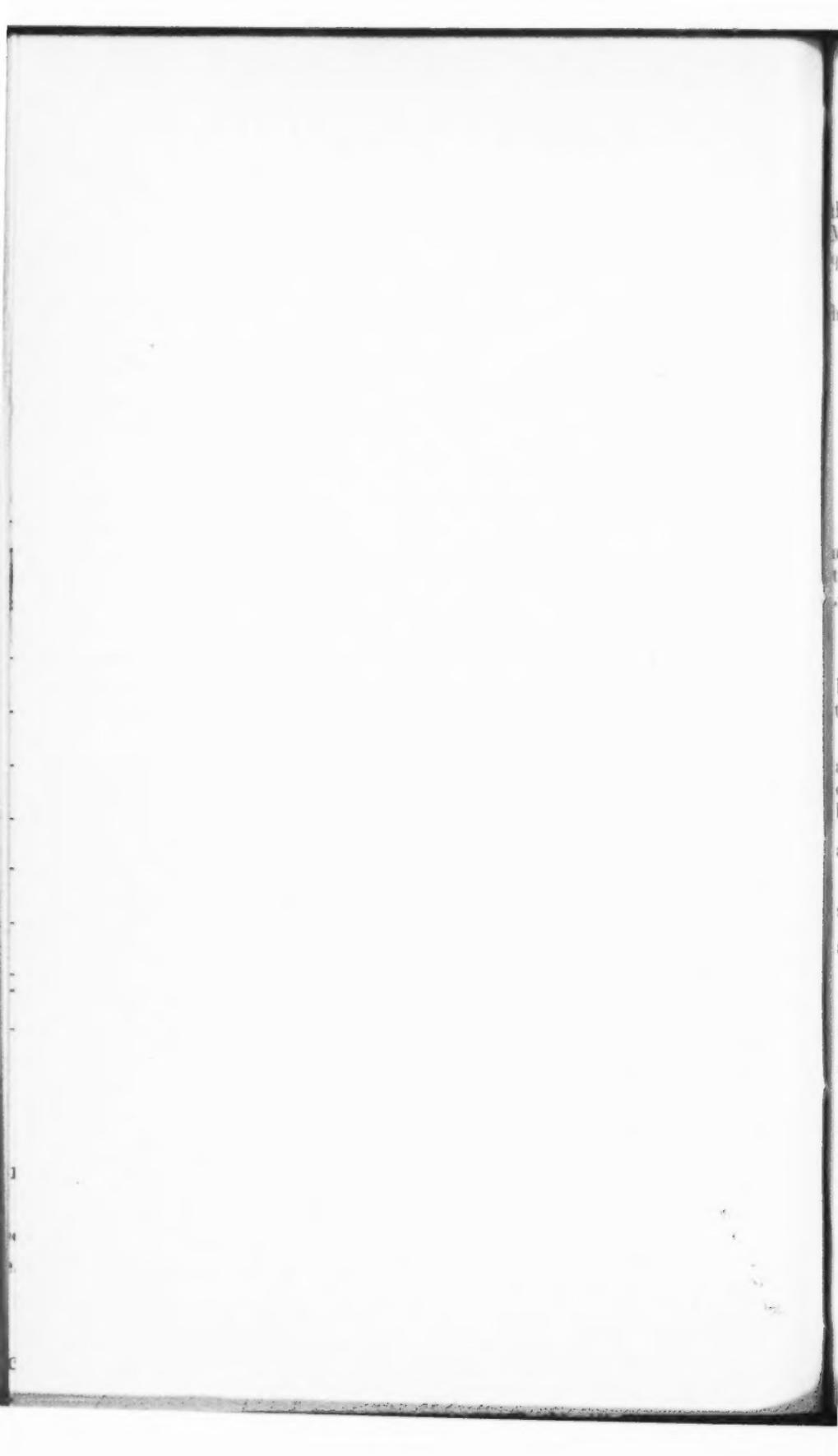
W. H. M. 11/11/11

CSSD

made to the following named persons; in accordance with
902 ~~and~~ 743

James Bixby
acting Chairman

officer having custody of
ment of the members of
e, Creek and Seminole
ion of the land of said
going is a true and cor-
made by the Commiss-
in the name of Barney
r 8592, on June 30, 1902.
to the Five Cen-



the Witness: Government's Exhibit No. 4 is a certified copy of resolution passed by the Commission to the Five Civilized Tribes on May 24, 1902, and is the resolution under which the allotment in question was made.

Mr. German: We offer this resolution as Government's Exhibit No. 4.

the Court: It may be admitted.
and Exhibit No. 4 is in words and figures as follows:

Gov. Ex. No. 4.

5/6/15.

MUSKOGEE, INDIAN TERRITORY, May 24, 1902.

session of the Commission to the Five Civilized Tribes was held in its general office at Muskogee, Indian Territory, on the above date, there being present commissioners Bixby, Needles and Breckinridge.

* * * * *

Whereas, section three of the Act of Congress approved March 3, 1901 (31 Stat., 861), known as the Creek Agreement, provides

All lands of said tribe except as herein provided shall be allotted among the citizens of the tribe by said Commission so as to give to each citizen an equal share of the whole in value as nearly as may be,

that

* * * there shall be allotted to each citizen one hundred and forty acres of land,"

Whereas, section seven of said act provides that,

* * * each citizen shall select from his allotment forty acres and as a homestead"

that

* * * if for any reason such selection shall not be made for any citizen, it shall be the duty of said Commission to make selection for him."

and, Whereas, numerous citizens of said nation have made no selection of land for allotment and others have made selections of only a portion of the land to which they are entitled, and Whereas, after due notice given, many citizens of said nation have failed to make a selection of a homestead, therefore, be it

Resolved, That the Acting Chairman is hereby authorized and empowered by and on behalf of the Commission to allot to each citizen of the lands of the Creek Nation not heretofore allotted or selected

such an amount of land of at least average quality as will make the total allotment of each citizen one hundred and sixty acres, and to select a homestead for such citizens in all cases where a selection of homestead has not been made by or on behalf of said citizen:

Provided, that the allotment and selection of homestead so made for a citizen shall include improvements shown by the plats or records of the office to belong to said citizen."

On motion of Commissioner Breckenridge, duly seconded, the same was unanimously adopted.

* * * * *

There being no further business before the meeting the Commission on motion was adjourned.

TAMS BIXBY,
Acting Chairman.

Attest:

A. L. AYLESWORTH, *Secretary.*

Department of the Interior, Office of Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said tribes and that the above and foregoing is a true and correct copy of the proceedings of the Commission to the Five Civilized Tribes, of May 24, 1902, in so far as same relates to the adoption of a resolution by said Commission, authorizing and empowering the Acting Chairman of said Commission to make allotments of land to each citizen of the Creek Nation who had not theretofore selected any land in allotment or had incomplete allotments.

GABE E. PARKER,
Superintendent for the Five Civilized Tribes.

May 1, 1915.

C. H. D.

By the Witness: There is another way that one can tell whether the allotment was arbitrarily made. It is a notation on the census card, that notations consists in the letter "L," that notation indicates

that an arbitrary allotment was made in that case. The allotment here in question was arbitrarily made, that is, no application was made to allot these lands, except one by the Commission. I have the patents issued in this case and Government's Exhibit No. 5 is the patent to the homestead allotment of forty acres that was issued in the name of Barney Thlocco, and Government's Exhibit No. 6 is the patent issued to Barney Thlocco covering the land allotted to him as surplus allotment.

By Mr. German: We offer Government's Exhibits Nos. 5 and 6.

By Mr. Stuart: We have no objection, Your Honor, except that there appears to be a cancellation on the face of the patents.

v the Witness: The matter written across the face of each of Exhibits Nos. 5 and 6 "Cancelled by decision of the U. S. Court he Eastern District of Oklahoma rendered July 29, 1911, from h no appeal was taken" was placed there after the decree rend in this court in the case of the United States vs. the Unknown s of Barney Thlocco, which has been set aside.

y Mr. German: We do not offer that statement.

y the Court: It is not contended that that decree has any bearing his case.

y Mr. German: In view of the vacation of that decree.

y the Court: Then those exhibits will be admitted, except that tion will not be considered as a part of the evidence.

Government's Exhibit No. 5 is in words and figures as follows:

Gov. Ex. 5.

Eq. 2017.—5/6/15.

Homestead Deed. (39A.) Creek Indian Roll No. 8592.

The Muskogee (Creek) Nation, Indian Territory.

All Whom These Presents Shall Come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901 (31 ts., 861), agreement ratified by the Creek Nation May 25, 1901, was provided that all lands of the Muskogee (Creek) Tribe of ians, in Indian Territory, except as therein provided, should be tted among the citizens of said tribe by the United States Com sion to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a arate deed, and

Whereas, the said Commission to The Five Civilized Tribes, or its ful successor, has certified that the land hereinafter described has n selected by or on behalf of Barney Thlocco, a citizen of said e, as a homestead.

Now, therefore, I, the undersigned, the Principal Chief of the skogee (Creek) Nation, by virtue of the power and authority ted in me by the aforesaid Act of the Congress of the United tes, have granted and conveyed and by these presents do grant and vey unto the said Barney Thlocco all right, title and interest of Muskogee (Creek) Nation and of all other citizens of said Nation and to the following described land, viz:

The southeast quarter of the northwest quarter of section nine (9), rship eighteen (18) north, and range seven (7) east

the Indian Base and Meridian, in Indian Territory, containing rty (40) acres, more or less, as the case may be, according to the

United States survey thereof, subject, however, to the conditions provided by said Act of Congress and which conditions are that said land shall be non-taxable and inalienable and free from any incumbrance whatever for twenty-one years; and subject, also, to the provisions of said Act of Congress relating to the use, devise and descent of said land after the death of the said Barney Thlocco; and subject, also, to all provisions of said Act of Congress relating to appraisement and valuation and to the provisions of the Act of Congress approved June 30, 1902 (Public No. 200).

In witness whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 11th day of March, A. D. 1903.

[SEAL.]

P. PORTER,

Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior, Approved Apr. 3, 1903, Ethan A. Hitechock, Secretary, by Oliver A. Phelps, Clerk. L. R. S.

[Endorsed across face:] Cancelled by decision of the U. S. Court for the Eastern Dist. of Oklahoma rendered July 29, 1911, from which no appeal was taken.

(On back:) Commission No. 9450. Homestead Deed—(39A). Muskogee (Creek) Nation to Barney Thlocco Indexed. Compared.

Filed for record on the 11 day of April, 1903, at 11 o'clock
48 A. M., and recorded in Book 6, Page 508. — — —, Commissioner to the Five Civilized Tribes, by T. B. Needles, Commissioner. File No. 4624. Department of the Interior. Received Mar. 31, 1903. Ene. No. — of No. —, Indian Territory Division.

Government's Exhibit No. 6 is in words and figures as follows:

Gov. Ex. 6.

Eq. 2017.—5/6/15.

Allotment Deed. (40A.) Creek Indian Roll No. 8592.

The Muskogee (Creek) Nation, Indian Territory.

To All Whom These Presents Shall Come, Greeting:

Whereas, By the Act of Congress approved March 1, 1901 (31 Stats., 861), agreement ratified by the Creek Nation May 25, 1901, it was provided that all lands of the Muskogee (Creek) Tribe of Indians, in Indian Territory, except as therein provided, should be allotted among the citizens of said tribe by the United States Commission to the Five Civilized Tribes so as to give to each an equal share of the whole in value, as nearly as may be, and

Whereas, It was provided by said Act of Congress that each citizen shall select, or have selected for him, from his allotment forty acres of land as a homestead for which he shall have a separate deed, and

Whereas, the said Commission to The Five Civilized Tribes, or its lawful successor, has certified that the land hereinafter described

been selected by or on behalf of Barney Thlocco a citizen of tribe, as an allotment, exclusive of a forty-acre homestead, as esaid,

now, therefore, I, the undersigned, the Principal Chief of the Muskogee (Creek) Nation, by virtue of the power and authority vested in me by the aforesaid Act of the Congress of the United States, have granted and conveyed and by these presents do grant and convey unto the said Barney Thlocco all right, title and interest he Muskogee (Creek) Nation and of all other citizens of said Nation in and to the following described land, viz:

The west half of the northwest quarter, and the northeast quarter of the northwest quarter of section nine (9), township eighteen (18) north, and range seven (7) east,

The Indian Base and Meridian, in Indian Territory, containing one hundred and twenty (120) acres, more or less, as the case may be, according to the United States survey thereof, subject, however, to all provisions of said Act of Congress relating to appraisement and valuation and to the provisions of the Act

Congress approved June 30, 1902 (Public No. 200).

In witness whereof, I, the Principal Chief of the Muskogee (Creek) Nation, have hereunto set my hand and caused the Great Seal of said Nation to be affixed this 11th day of March, A. D. 1903.

[SEAL.]

P. PORTER,
Principal Chief of the Muskogee (Creek) Nation.

Department of the Interior, Approved Apr. 3, 1903. Ethan A. Hatchcock, Secretary. By Oliver A. Phelps, Clerk. L. R. S.
[Endorsed across face:] Cancelled by decision of the U. S. Court
the Eastern Dist. of Oklahoma rendered July 29, 1911, from
which no appeal was taken.

(On back:) C8592. Commission No. 9451. Allotment Deed—
0.A.) Muskogee (Creek) Nation to Barney Thlocco Indexed
Impaired. Held up. Filed for record on the 11 day of April,
03, at 11 o'clock A. M., and recorded in Book 7, Page 508. —
—, Commissioner to the Five Civilized Tribes, by T. B. Needles,
Commissioner. File No. 4624. Department of the Interior. Re-
ceived Mar. 31, 1903. Encl. No. — of No. — Indian Territory
vision.

By the Witness: Those patents after they were recorded in the office of the Commission were delivered to the Principal Chief of the Creek Nation for delivery to the allottee. There then arose a question as to whether or not Barney Thlocco was entitled to an allotment and the patents were recalled from his office and placed in our files, where they have been ever since, and they have not been delivered. They were the only patents that were ever issued pursuant to the allotment made in the name of Barney Thlocco.

On cross-examination W. H. ANGELL testified substantially as follows:

There were a great many full-blooded Creeks who did not select or apply for their allotments and where that was true the Commission made selections for them. The purpose of delivering these patents to the chief of the Creek Nation after they had been recorded was so that he could transmit them by mail, or some other method of actual delivery, to the allottee.

On redirect-examination said witness testified that the reason for making arbitrary allotments was because there were persons 50 enrolled who had not appeared to make application for their allotment.

Witness excused.

And thereupon J. E. KIRKBRIDE being called on behalf of the Government was sworn and under oath testified substantially as follows:

Direct examination:

My name is J. E. Kirkbride. I am acquainted with what is known as the Barney Thlocco allotment in the Creek Nation and I saw said lands on the 3rd day of November, 1913, which was prior to their occupancy for the purpose of developing them for oil and gas purposes. The 160 acres of said allotment is in a body and said lands were not, to my knowledge, at that time occupied.

"Q. We- there any improvements on the land? A. No, sir."

By Mr. Stuart: Your Honor, I cannot see the materiality of this and I object to it.

By the Court: Well, I do not see it just now myself. I will hear you.

By Mr. German: Your honor, the object of this testimony is to prove that the lands have never been taken possession of by the alleged heirs of Barney Thlocco or any one claiming under this patent, at least, prior to the time that the Secretary cancelled the enrollment and prior to the time that the Government made the attack in this case.

By the Court: I don't think that the question whether the parties had possession or not would be material if the court is correct in the holding that the legal title passed; the Government can not complain because possession was not taken.

By Mr. German: We except.

By the Court: Exception noted.

By Mr. German: We offer to prove by this witness that the lands were unoccupied; unimproved, and had not been occupied by fencing, houses, nor had they been tilled or in any other manner occupied or in the possession—physical possession of any person prior to the time that the cancellation order was made by the Secretary of the Interior in December, 1906, or prior to the time of the attack by the Government in this court in this case.

By the Court: The record may show the offer.

By Mr. Stone: And our objection, Your Honor——

51 By Mr. German: Yes, sir. We except to the court's ruling in excluding and refusing to permit us to make that proof.

By the Court: Exception noted.

By Mr. Davidson: Was the record made clear that *that* counsel for the defendants object to the offer?

By Mr. Stone: We do.

By the Court: I understand they object to the offer for the same reason as objection was made to the question last ruled to which the court sustained the objection.

By Mr. German: And the Government excepts.

By the Court: Exception noted.

By Mr. German: That is all, Mr. Kirkbride.

Witness excused.

W. H. ANGELL being recalled on behalf of the Government further testified substantially as follows on direct examination:

Since testifying awhile ago I have ascertained the date on which the patents in question were returned to the Dawes Commission by the Creek Chief, it was August 31, 1904.

"Q. Were those recalled by the Commission? A. The notation on the record in the chief's office reads in this way: 'Hold up, Mott, National Attorney; return to D. Commission, 8/31/'04.'

Q. 'Return to D. Commission,' evidently standing for Dawes Commission? A. Yes, sir; and in red, 'Stricken from approved roll, December 13, 1906, Commission File No. 55,241, 1906.'"

By Mr. Stuart: We move to strike the answer for the same reason that the other evidence in regard to the action of the Secretary in December, 1906, has been excluded.

By the Court: The motion is sustained and exception noted, that is merely as to the notation on the chief's records.

By Mr. German: Pertaining to the cancellation.

By the Court: Pertaining to the cancellation in 1906.

Witness excused.

By Mr. German: We now offer in evidence as Government's Exhibit No. 7, the records of the Commissioner to the Five Civilized Tribes pertaining to the institution of proceedings in that office looking toward the cancellation of the enrollment of the name

52 Barney Thlocco and cancelling said enrollment, which records consist of the following instruments, briefly stated:

A letter written by the Chairman of the Commission to the Five Civilized Tribes to the Secretary of the Interior, dated August 24th, 1904. A letter dated September 7, 1904, from the Commissioner of Indian Affairs to the Secretary of the Interior. Affidavits dated August 9, 1904, signed and sworn to by Wilson Knight and Barney Yahola, pertaining to the date of the death of Barney Thlocco. A letter dated September 16, 1904, from the Secretary of the Interior to the Commission to the Five Civilized Tribes. The testimony of

Jonas Bear taken October 21, 1905, after the matter of the enrollment of Barney Thlocco had, in the year 1904, been re-opened which pertains to the date of the death of Barney Thlocco. The testimony of Charlie Simer given on November 14, 1905, in the same matter and pertaining to the same matter. A notice dated February 9, 1906, addressed by the Acting Commissioner to the Five Civilized Tribes--addressed to the heirs of Barney Thlocco giving notice of the opening of the case and the hearing thereon. A letter dated October 10, 1906, from the Commission to the Five Civilized Tribes to the Secretary of the Interior. A letter dated December 13, 1906, from the Secretary of the Interior to the Commission to the Five Civilized Tribes.

Said Exhibit No. 7, consisting of nine documents, is in word and figures as follows:

Refer in reply to the following:

Gov. Ex. 7.

2017, Eq.—5/6/15.

Department of the Interior, Commission to the Five Civilized Tribes,

MUSKOGEE, INDIAN TERRITORY, August 25, 1904.
The Honorable, the Secretary of the Interior.

SIR: The name of Barney Thlocco is contained in the partisanship of citizens by blood of the Creek Nation, approved March 28, 1904, No. 8592.

August 9, 1904, the Attorney for the Creek Nation delivered to the Commission for transmission to the Department, a communication in the nature of a motion to reopen the case, and an affidavit executed by Wilson Knight and Barney Yahola relative to the date of death of Barney Thlocco. It appears from said affidavit that Barney Thlocco died prior to April 1, 1899.

53 It is recommended that the case be reopened and that a hearing be ordered.

The communication from the Creek attorney and affidavit of Wilson Knight and Barney Yahola are inclosed for Departmental consideration.

Respectfully,

TAMS BIXBY, Chairman

Through the Commissioner of Indian Affairs.

D. C. S. 2—25/04.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and that the disposition of the land of said tribes, and that the above and going is a true and correct copy of a letter press copy, dated A.D.

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25, 1904, addressed to the Secretary of the Interior and signed by Tams Bixby, Chairman, in the matter of the enrollment of Barney Thlocco, citizen by blood of the Creek Nation, Roll No. 8592.

THOS. RYAN,
Acting Commissioner to the Five Civilized Tribes.

Muskogee, Oklahoma, October 28, 1910.

Refer in reply to the following:

Land: 58606-1904; 59020-1904.

Department of the Interior, Office of Indian Affairs.

WASHINGTON, September 7, 1904.

The Honorable the Secretary of the Interior.

SIR: There is enclosed a report from the Commission to the Five Civilized Tribes dated August 25, 1904, concerning the application of the attorney for the Creek Nation in the matter of the reopening of the enrollment case of Barney Thlocco whose name appears upon the approved partial rolls opposite No. 8592.

There is enclosed a communication from the attorney for the Creek Nation dated August 9, last, transmitting the affidavit of Wilson Knight and Barney Yahola, wherein they state that they personally knew that said Thlocco died prior to April 1, 1899. From the communication of Mr. Mott it would appear that deeds numbered 9450 and 9451 have been issued in favor of said deceased citizen or his heirs. Mr. Mott's communication of the Commissioner's report does not show whether said deeds have been approved by the

Department and delivered to the heirs of the deceased citizen.

54 However, from the affidavit enclosed it seems that the Creek Nation should be given an opportunity to introduce testimony concerning the death of Barney Thlocco, and it is respectfully recommended that the case be re-opened, provided the deeds mentioned have not been approved and delivered to the heirs of the deceased citizen. If such action has been taken. The Commission should make further report to the Department and not take any action concerning the re-opening of said case or the introduction of additional testimony until they have been further instructed in the premises.

Very respectfully,

W. A. JONES, *Commissioner.*

G. A. W.-D.

This is to certify that I am the officer having the custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of a copy of letter from the Commissioner of Indian Affairs to the Secretary of the Interior dated

September 7, 1905, relative to the enrollment case of Barney Thlocco deceased, Creek by blood, roll No. 8592.

THOS. RYAN,
Acting Commissioner to the Five Civilized Tribes.
 L.

Muskogee, Oklahoma, October 28, 1910.

Copy of a Copy.

MUSKOGEE, I. T., August 9, 1904.

Personally appeared before me Wilson Knight and Barney Yahola and after being duly sworn say that they knew personally Barney Thlocco, and that he died prior to April 1, 1899.

(Signed) (his)
 WILSON x KNIGHT.

(Signed) (his)
 BARNEY x YAHOLA.
 mark (his)
 mark)

Witnesses:

CHARLES H. SAWYER.
 WM. HEARD.

Subscribed and sworn to before me this 9th day of August, 1904.
 [SEAL.] (Signed) CHARLES H. SAWYER,

Notary Public.

My Commission expires Oct. 28, '06.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and that the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of a copy of affidavits made by Wilson Knight and Barney Yahola relative to the date of the death of Barney Thlocco, Creek by blood, Roll No. 8592.

THOS. RYAN,
Acting Commissioner to the Five Civilized Tribes.
 L.

Muskogee, Oklahoma, October 28, 1910.

55 I. T. D. 7234. W. F. C.-L. L. B.-J. P.

Department of the Interior.

WASHINGTON, September 16, 1904.

Commission to the Five Civilized Tribes, Muskogee, Indian Territory

GENTLEMEN: The Department is in receipt of your communication of August 25, 1904, transmitting a motion signed by M. L. Mott, attorney for the Creek Nation, to re-open the Creek enrollment case of Barney Thlocco, and certain affidavits in support of

said motion from which it appears that said Barney Thlocco died prior to April 1, 1899. You report that said Barney Thlocco's name appears on the partial list of citizens by blood of the Creek Nation approved March 28, 1902, No. 8592.

It appears from said communication that deeds No. 9450 and 9451 have been issued in favor of said deceased citizen or his heirs.

Reporting September 7, 1904, the Commissioner of Indian Affairs recommends that the case be re-opened and that you be directed to order a rehearing, providing the deeds mentioned have not been approved and delivered to the heirs of the deceased citizen. That if said deeds have been delivered you should make further report to the Department and not take any action concerning the re-opening of said case or the introduction of additional testimony until you have been further instructed in the premises. Copy of his letter is enclosed.

The Department does not believe that the question as to whether or not deeds have been issued to the deceased or his heirs should be considered in connection with the motion for rehearing inasmuch as deeds to the land constitute only a portion of the benefits incidental to Creek citizenship. If the name of the deceased appears on the roll erroneously the error should be corrected. The motion for rehearing is therefore granted and you will so notify the parties concerned.

Respectfully,
(Signed)

THOS. RYAN,
Acting Secretary.

1 inclosure.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of a copy of Departmental letter dated September 16, 1904, relative to reopening the enrollment case of Barney Thlocco, Creek by blood, roll No. 8592.

56 ment case of Barney Thlocco, Creek by blood, roll No. 8592.
INMOC, D.N.A.N.

THOS. RYAN.

Acting Commissioner to the Five Civilized Tribes.

14

Muskogee, Oklahoma, October 28, 1910.

En. 935.

Department of the Interior, Commissioner to the Five Civilized Tribes.

OKEMAH, I. T., October 21, 1905.

In the Matter of the Enrollment of Barney Thlocco, Deceased, as a Citizen by Blood of the Creek Nation.

JONAS BEAR, being duly sworn, testified as follows:

Through Alex Posey, Official Interpreter.

By the Commissioner:

Q. What is your name?

A. Jonas Bear.

Q. How old are you?

A. Thirty.

Q. What is your post office address?

A. Okemah.

Q. Are you a citizen of the Creek Nation?

A. Yes, sir.

Q. To what town do you belong?

A. Greenleaf.

Q. Did you know Barney Thlocco?

A. Yes, sir, I was well acquainted with him.

Q. Do you know to what town he belonged?

A. I think he belonged to Tuckabatche.

Q. Do you know the date of his death?

A. Not exactly, but I know about when he died.

Q. About when did he die?

A. He died sometime in January or February, 1899, at the time so many people died of smallpox. He died in the pest camp at Hillabee Huteche, but before I was taken there.

Q. When were you taken to the pest camp?

A. On April 3, 1899. Barney Thlocco had been dead about two months at that time. The smallpox was most fatal during the months of January and February, and it was then that he died. The disease was pretty well under control at the time I was taken to the pest camp.

Q. Do you know how old he was at the time of his death?

A. I judged him to be about forty years old.

Q. Did he have a family?

A. Yes, sir, but his entire family died of the smallpox.

Q. Do you remember the circumstance of the opening of the Creek Land Office?

A. I do.

Q. Are you positive that he died before the opening of the Creek Land Office?

A. Yes, sir.

, D. C. Skaggs, on oath state that the above and foregoing is a
and true transcript of my stenographic notes as taken in said
se on said date.

D. C. SKAGGS.

Subscribed and sworn to before me this 2 day of Jan. 1906.

[SEAL.]

ALEX POSEY,
Notary Public.

E.H.

En. 835.

partment of the Interior, Commissioner to the Five Civilized
Tribes.

PRICE, I. T., November 14, 1905.

the Matter of the Enrollment of Barney Thlocco, Deceased, as a
Citizen by Blood of the Creek Nation.

CHARLEY SIMMER, being duly sworn, testified as follows:

Through Alex Posey, Official Interpreter:

By the Commissioner:

Q. What is your name?

A. Charley Simmer.

Q. What is your age?

A. I was about ten years old during the Isparheche insurrection.

Q. What is your post office address?

A. Okemah.

Q. Are you a citizen of the Creek Nation?

A. Yes, sir.

Q. To what town do you belong?

A. Fish Pond. I am a member of the house of Warriors for that

town.

Q. Do you know Barney Thlocco?

A. I was well acquainted with him. He was a member of Tuckachee town.

Q. Do you know when he died?

A. He died of the smallpox in the pest camp, at Hillabee Huteche, the latter part of December, 1898, or in the early part of January, 1899. He was among the first victims of the smallpox epidemic. His brother, Mejessie, died of the same disease, in January, 1899, together with his entire family, and Barney Thlocco died before he did.

Q. How old was he?

A. He was probably forty years old.

Q. Did he have a family?

A. He had a wife and two children. A son about eighteen and a daughter who was younger.

Q. What was the name of his wife?

A. Haga.

Q. Do you know to what town she belonged?

A. No, sir.

Q. What were the names of his children?

A. His son's name was Chanefee. I have forgotten the name of his daughter.

Q. Did his wife and two children also die of the smallpox?

A. Yes, sir. I knew Barney Thlocco and his family when they lived in the Cherokee Nation. They removed there during the Isparheche War, and lived there for some time. I had relatives in the Cherokee Nation and was also living there.

Q. Are you positive that he died in either December, 1898, or January 1899?

A. Yes, sir.

Q. Do you remember the circumstance of the opening of the Creek Land Office?

A. Yes, sir.

58 Q. Did he die before or after the opening of the Creek Land Office?

A. He died before.

I, D. C. Skaggs, on oath state that the above and foregoing is a full and true transcript of my stenographic notes as taken in said cause on said date.

D. C. SKAGGS.

Subscribed and sworn to before me this 2 day of January, 1900.

[SEAL.]

ALEX POSEY,

Notary Public.

Refer in reply to the following:

Copy.

Department of the Interior, Commissioner to the Five Civilized Tribes.

MUSKOGEE, INDIAN TERRITORY, February 9, 1906.
To the Heirs of Barney Thlocco, Arbeka, Indian Territory.

GENTLEMEN: October 1, 1904, the Secretary of the Interior reopened the case of Barney Thlocco for a rehearing, on motion of the attorney for the Creek Nation accompanied by affidavits to the effect that said party died prior to April 1, 1899.

You are hereby advised that on February 19, 1906, at 9 o'clock A. M. at the office of the Commissioner to the Five Civilized Tribes in Muskogee, Indian Territory, the matter of the right to enrollment of said Barney Thlocco, deceased, will be investigated.

The attorney for the Creek Nation has been notified of said re-

hearing and that he will be given an opportunity to introduce evidence at said time and place.

Respectfully,
(Signed)

WM. O. BEALL,
Acting Commissioner.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of a letter of the Acting Commissioner to the Five Civilized Tribes dated February 9, 1906, notifying the heirs of Barney Thlocco, deceased, that a hearing would be had at the office of the Commissioner to the Five Civilized Tribes in the matter of the right to enrollment of Barney Thlocco, Creek by blood, Roll number 8592.

THOS RYAN,
Acting Commissioner to the Five Civilized Tribes.
L.

Muskogee, Oklahoma, October 28, 1910.

59

Cr. En. 935.

MUSKOGEE, INDIAN TERRITORY, October 10, 1906.

The Honorable The Secretary of the Interior.

SIR: August 25, 1904, the Commission to the Five Civilized Tribes transmitted to the Department a communication from the attorney for the Creek Nation in the nature of a motion to reopen the matter of the right to enrollment of Barney Thlocco, deceased, whose name is contained in a partial list of citizens by blood of the Creek Nation approved by the Secretary of the Interior March 28, 1902, opposite No. 8592. Said motion was accompanied by an affidavit executed by Wilson Knight and Barney Yahola to the effect that said Barney Thlocco died prior to April 1, 1899.

The Commission to the Five Civilized Tribes, in its report transmitting said motion and affidavit, recommended that the case be reopened and that a hearing be ordered.

September 16, 1904 (I. T. D. 7234-1904), the Department reopened said case and referring to the fact, as shown by the records of this office, that deeds Nos. 9450 and 9451 covering the allotment selection made to said Barney Thlocco, deceased, have been issued (which said deeds were transmitted to the Principal Chief of the Creek Nation for delivery, on February 11, 1903), stated that,

"The Department does not believe that the question as to whether or not deeds have been issued to the deceased or his heirs should be considered in connection with the motion for rehearing, inasmuch as deeds to land constitute only a portion of the benefits incidental to Creek Citizenship. If the name of the deceased appears on the roll erroneously, the error should be corrected."

July 24, 1905, this office received a communication from the at-

torney for the Creek Nation withdrawing all motions to reopen Creek enrollment cases filed by him prior to the meeting of the Creek Council in October, 1904.

October 2, 1905, a report was transmitted to the Department in the matter of the right to enrollment of Aaron McGirt, deceased, and it was recommended in said matter that in view of the facts in the case and of the action of the attorney for the Creek Nation in withdrawing his motion to reopen same, that the enrollment of said Aaron McGirt, deceased, be allowed to stand.

The Department under date of November 3, 1905 (I. T. D. 14250-1905), directed that investigation be had as to the right to enrollment of said Aaron McGirt, deceased, stating that "It is not necessary for the Creek Nation to supply funds to investigate this matter.

60 You are authorized to see that correct rolls of Creek citizens are made and have been furnished with the means necessary for that purpose."

In accordance with instructions as above set forth, an attempt was made to locate the heirs of said Barney Thlocco, deceased, by letter and through a Creek enrollment field party, but the effort in this direction was unsuccessful.

Wilson Knight and Barney Yahola, upon whose affidavit said case was reopened, having died, the testimony of other witnesses was taken in this matter by the Creek field party on October 21 and November 14, 1905, neither the Creek Nation nor the heirs of said deceased being represented at said hearings.

A hearing in this matter was set for February 19, 1906. No testimony or other evidence was introduced on said date.

I am of the opinion that the testimony introduced in the later proceedings, considered in connection with the affidavit of Wilson Knight and Barney Yahola, previously submitted, conclusively establishes the date of death of Barney Thlocco as prior to April 1, 1899, and respectfully recommend that authority be granted for the striking of the name of said applicant from the approved roll of citizens by blood of the Creek Nation opposite No. 8592.

The complete record in the case is transmitted herewith.

Respectfully,

(Signed)

TAMS BIXBY, *Commissioner.*

Through the Commissioner of Indian Affairs. A. G.—200.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the lands of said tribes and that the above and foregoing is a true and correct copy of the letter press copy from the Commissioner to the Five Civilized Tribes to the Secretary of the

erior dated October 6, 1906, relative to the cancellation of the enrollment of Barney Thlocco, Creek by blood, Roll No. 8592.

THOS RYAN,
Acting Commissioner to the Five Civilized Tribes.
L.

Muskogee, Oklahoma, October 28, 1910.

T. D. 22734-1906. L. R. S.

J. F., Jr.

Department of the Interior.

WASHINGTON, December 13, 1906.

Commissioner to the Five Civilized Tribes, Muskogee, Indian Territory.

SIR: October 10, 1906, you transmitted a report in reference to the right of Barney Thlocco, deceased, whose name is contained in a partial list of citizens by blood of the Creek Nation, opposite No. 8592, to enrollment as a citizen of said nation. By reason of an investigation held by you, you consider that said Barney Thlocco died prior to April 1, 1899, and you therefore recommend that authority be granted for the striking of the name of said applicant from the approved roll of citizens by blood of the Creek Nation.

Reporting November 12, 1906 (Land 95459), the Indian Office concurs in your recommendation.

The Department has this day canceled the name of Barney Thlocco, opposite No. 8592, from the partial list of citizens by blood of the Creek Nation, and has requested the Indian Office to take similar action on the roll in its possession.

You are hereby authorized to cancel said name from the roll in your custody. It appearing that deeds Nos. 9450 and 9451, covering the allotment selection made to said Barney Thlocco, deceased, have been issued and delivered heretofore, the Attorney-General has this day been requested to take such action as he may deem proper looking to the setting aside of said instruments.

Respectfully,

E. A. HITCHCOCK, *Secretary.*

Department of the Interior, Office of Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said tribes and that the above and foregoing is a true and correct copy of letter from the Secretary of the Interior, dated December 13, 1906, to the Commission to the Five Civilized Tribes authorizing cancellation of the name of Barney

Thlocco from the approved roll of Citizens by Blood of the Creek Nation, opposite No. 8592.

GABE E. PARKER,
Superintendent for the Five Civilized Tribes.

May 1, 1915. C. H. D.

End of Exhibit No. 7.

By Mr. Stuart: We object to it, your honor.

By the Court: It relates to the action of the Secretary—leads up to and relates to the action of the Secretary in December, 1906, I take it?

By Mr. German: Yes, sir. Now, your honor, we desire to make some observations in reference to this matter before your honor rules on this. It arises out of this question: The Commission upon the motion of the attorney for the Creek Nation, which motion was made on August 9, 1904, re-opened this case in the year 1904, and conducted this hearing in the year 1905, all of which was prior to the year 1906, when the Act of April 26, 1906, was passed. Judge Davidson will present some observations on the effect of the re-opening of the case before the Act of April 26, 1906.

By Mr. Davidson: And there is another question if the court please, besides that. It now develops from the testimony of Mr. Angell that this patent never was delivered.

And thereupon the court hears arguments until the noon hour having been reached court adjourned until 2:00 o'clock P. M.

And thereafter at 2:00 P. M., court having convened pursuant to adjournment, further proceedings herein were had as follows:

By the Court: In view of the character of the exhibit now offered—Exhibit 7—upon which partial argument was made before the noon hour, while I practically passed upon most of those matters in an announcement this morning, I am disposed to hear you gentlemen further if you desire, in the matter. It is a thrashing over of old straw, as I conceive, but my views announced this morning in view of the character of the evidence now offered and the situation presented, are just a little bit shaken and I have concluded to take the time to hear you further if you desire in the matter.

Well, I have concluded, gentlemen, to adhere to the former rulings in this case and try the case as if the Secretary had not acted as appears from Exhibit No. 7 offered, without going over the matter again. The objection will be sustained and your exception will be noted. You may proceed, gentlemen.

Thereupon HECKTOR BEAVER was called and sworn as a witness on behalf of the complainant and testified substantially as follows, on direct examination:

I understand the English language. I go by the name of Hecktor Beaver, but am on the roll as John Beaver. I am about 60 years old

am a full blood Indian citizen of the Creek Nation. I live north Bristow. I did live in the Hilliby Settlement southeast of the town of Stroud. I knew Barney Thlocco during his lifetime.

He lived a part of the time north of Bristow. He died east of Hilliby Creek about 10 miles southeast of Stroud, at which point he was living at the time of his death.

Q. What year did he die in?"

By Mr. Stone: Your honor, we object. No proper predicate has been made for this question. It is first incumbent upon the Government to reach the finding in judgment of the Dawes Commission before the trial of the issues sought to be injected in this suit.

By the Court: In view of the ruling of the court with regard to the action of the Secretary it leaves this case now as if Thlocco were still living enrolled. Unless it appears from the proof in this case on the part of the Government, unless the allegation is supported by some proof that the Commission acted without evidence, in my judgment that ends the case and the order of proof should be first in relation to that.

By Mr. German: We save an exception to the ruling of the court.

By the court: Exception noted. You may first address your proof on the question as to whether or not there was before the Commission any evidence with regard to the fact *that* of Barney Thlocco's living April 1, 1899, when he was enrolled.

By Mr. Davidson: If the court please, could not this evidence be admitted now, then if the court should hold that we had not impeached successfully the judgment of the Commission the court won't consider it.

By the Court: What is the use of going into all this evidence if it is made to appear it is not necessary to go into it?

By Mr. Davidson: The court holds that it is not material evidence?

By the Court: I hold that the order of proof in this case should be with relation to the allegation as to the entire absence of evidence on the part of the Dawes Commission, before the Dawes Commission as to Barney Thlocco being alive April 1, 1899. In my judgment, that judgment of the Commission should be impeached.

By Mr. Davidson: We can end this case in five minutes, if this evidence is not material evidence then it don't hurt anybody to let it in. That is true. Now if they will admit that all of these witnesses will testify that he did die prior to April 1, 1899, or admit that that is a fact and then set up the judgment of the Dawes Commission and rely upon that, as I understand that to be their position, we will end this case right now.

By the Court: Well, you have set that up yourself for the Government.

By Mr. Davidson: We set it up as one of the facts in this case.

By the Court: Well, I hold, gentlemen, that the order of proof in this case shall be first with relation to the question as to lack of evidence before the Dawes Commission.

By Mr. German: We except, your honor.

By the Court: Exception noted.

By Mr. German: We would like to make an offer as to what we expect to prove by this witness and likewise by some other witnesses of like character on the same subject.

By the Court: I don't think the offer is competent until the foundation is laid.

By Mr. German: In order to make the record according to this theory it occurs to me that it would be proper that we make the offer in the record as to what we expect to prove.

By the Court: Well, I will permit you to make the offer.

By Mr. German: We offer to prove by this witness that he knew Barney Thlocco; he knew him for a number of years before his death; that the witness lived about a mile and a quarter northwest of the home of Barney Thlocco at the time of a smallpox epidemic in the Hilliby Indian settlement in the year 1899; that the witness remembers and will testify as to when Lee Patrick, the United States Indian Agent for the Sac and Fox Agency, which agency had its headquarters about six or eight miles northwest of the location of the Hilliby settlement, established a pest camp at or near the home of this witness, and when a quarantine against the smallpox was established around the Hilliby Settlement. And that prior to this time, which was in the latter part of January, 1899, Barney Thlocco died of smallpox. By this witness we further offer to prove that he, the witness, visited the home of Barney Thlocco the night before the death of Barney Thlocco and at this time Thlocco was sick with the disease which the Indians thought was black measles. That several other Indians in the same locality were suffering from the same disease but neither the witness nor the Indians in the locality knew the affliction to be smallpox until the establishment of the pest camp by the Indian Agent in January, 1899. That the lumber used to build the coffin for Barney Thlocco was taken from an old house belonging to the witness, and witness saw Barney Thlocco's grave in the Indian cemetery about 200 yards from the house of Barney Thlocco. That the witness saw Barney Thlocco's coffin on the porch of the house of Barney Thlocco. The witness will testify that the making of the coffin, the seeing of the same at the house of Barney Thlocco and

observing the grave of Barney Thlocco was all before the
65 establishment of the pest camp by Lee Patrick, the Indian

Agent. Witness can and will further identify and fix the time by reason of the fact that several of the members of the witness's family died of this disease prior to the establishment of the pest camp and after the death of Barney Thlocco. That the witness will testify about the time the pest camp was established he visited the house of Barney Thlocco in company with one Jim Combest, who was then engaged as a nurse for the Indian Agent in connection with the smallpox epidemic. That Combest took from this house on this occasion all the remaining members of the Thlocco family who were yet alive and all of them were suffering from smallpox, these people being taken to the pest camp. That at the time Thlocco was dead and buried. That about this time witness took Jim Combest to

the home of Tuskegee Harjo, who was suffering from the smallpox, and Combest took Tuskegee Harjo and the members of his family to the pest camp. Witness knows that Tuskegee Harjo attended the funeral of Barney Thlocco and that Tuskegee Harjo died on the night of his removal to the pest camp—

By the Court: Let me ask you this, Mr. German: Is it your purpose at any stage of the proceeding to introduce evidence with regard to the lack of evidence before the Dawes Commission?

By Mr. German: We have laid the theory which we have been presenting to the court. In view of the court's rulings we shall introduce, if the court denies our offer of this testimony, upon the date of the death, and when we have made our record if the court will not let us introduce this testimony unless we have proved first the charge of arbitrary enrollment, then we will introduce evidence on that subject.

By the Court: That is evidence with regard to the lack of evidence before the Dawes Commission as alleged in the bill?

By Mr. German: Yes, sir.

By Mr. Stone: We ask, your honor, that he be required to do that now.

By the Court: Here is the trouble about that: If that offer is permitted to go in the record now in advance of that other evidence, the evidence had just as well be gone into because then it will be in the record, the evidence upon one side, but as to whether or not the evidence on the other side is in will depend upon whether or not evidence is offered. After taking this long offer there is a question whether the court can consider this offer as evidence.

By Mr. Stone: Your honor, we ask that that be stricken. It presents no point not already presented to which counsel has reserved his exception and it is improperly in the record. It is not the way to try the case.

By the Court: My view of this case, gentlemen, as I have announced heretofore, and that is it presents the two questions, first, the question whether this judgment of the Commission successfully assailed. I don't see any good purpose to be served by letting into the record this long offer to prove. I think the court should and the court will control the order of proof in this case to the extent of requiring that proof first be offered in relation to the question of the lack of evidence before the Commission and your offer to prove will be denied and your exceptions will be noted and the proof already offered will be stricken from the record and that will make your record.

Mr. German: We save our exception to striking our proof and denying the privilege of making the offer and in excluding the testimony of the witness.

By the Court: It is now the ruling of the court that the order of proof should proceed, first, upon the question of the lack of evidence.

By Mr. German: You are excused, Mr. Beaver.

(Witness dismissed.)

Whereupon EDWARD MERRICK was called and sworn as a witness on behalf of the complainant and testified as follows:

Direct examination by Mr. German:

By Mr. German: Your honor, in deference to the order of the court, but waiving no rights, we proceed now.

By the Court: The record may so show.

EDWARD MERRICK on direct examination testified substantially as follows:

My name is Edward Merrick. I am connected with the office of the Superintendent for the Five Civilized Tribes, formerly the Union Agency, and prior to that, the Dawes Commission. I began work as an employee of the Dawes Commission on the 4th day of March, 1901, and was stationed at Muskogee, where the office of the Commission was. The work I did during the month of March and a part of the month of April, 1901, was to write up the records of the 1896 Citizenship Cases, following that I was placed in the Creek enrollment division. The Commission did not continue the work of enrolling Creek citizens altogether at Muskogee, but there was a party sent out to Okmulgee in March and then following that

May, 1901. Okmulgee was the capital of the Creek Nation.

67 I was with the party that went there in May, 1901. We were in the first part of May. We were there, I judge, about three weeks and until the Original Creek Agreement was ratified, on May 25, 1901. We left there a day or two after that. While there myself and others were engaged in the work of listing Creek citizens on census cards for enrollment. I think Mr. Hastain and I did most of it the last few days. I entered the name of Barney Thlocco on the census card, which is the Government's Exhibit No. 1. I did that on May 24, 1901, at Okmulgee. The last two or three days before May 25, 1901, we listed for enrollment between 200 and 300 names per day. That is only a guess; there was quite an office there, Mr. Bixby, Mr. Hopkins, Mr. Lieber, Mr. Hastain, and I believe Mr. Hastain and myself wrote most of the cards the last two or three days. By listing for enrollment we mean placing the name on a census card bearing our field number, those cards were given a number before they left Muskogee in the early part of May.

"Q. How did it happen that you listed so many names for enrollment during those days?

A. Well, up to the time that the party went to Okmulgee there were a great many names on the 1890 and 1895 authenticated rolls unaccounted for; that is, no one had appeared at the office to ask for their enrollment and the party went to Okmulgee at that time to try to bring in the members of the Creek Tribe who had not appeared at the office at Muskogee and not appeared before the party in March to get them to come and get them enrolled. In fact, the marshal was out there, Leo Bennett.

Q. The United States Marshal?

A. And we brought in a great many; had wagons and teams over the country.

Q. Then what did you do with the names of those who didn't come in?

A. Along about May 20th or 25th, I believe, it seemed we had brought in or citizens had appeared all that we could get and there was a provision in that treaty that provided that no name shall hereafter be added to the roll. No name shall be listed for enrollment after the ratification of the agreement.

Q. That is the first section of section 28?

A. I don't know just what section. The impression was that it was necessary that all names, all persons who appeared on the rolls (tribal rolls) unaccounted for should be listed on a card so we could say they were listed prior to the ratification of the agreement, and in order to do that the Creek Counsel held off two or three or four days acting on the agreement until we had gone through both the 1890 and the 1895 rolls.

Q. So the names that you placed on census cards, such as the exhibit as you hold in your hand, Government's Exhibit No. 1, from about May 21st to May 25th were of that class?

68 A. Well, a great many. The majority of them were. Of course, cases where no person appeared and where we had no old census cards we could only list a name as it appear- on the tribal roll because that was all the information we had.

Q. What do you mean by old census cards?

A. Well, prior to that in 1897, so I am informed, I don't know this personally, but in 1897 and 1898, parties were sent out over the Creek Nation to list members of the Creek Tribe and the names and the families were listed on what we call the old census cards."

That was really the taking of a census and not an enrollment, but we often used the old census cards to aid us in completing the regular census cards. We had an old census card of Thlocco. The persons whose names we listed for enrollment on May 24, 1901, who did not appear for enrollment we took from the tribal rolls or the old census cards. Thlocco was one of those who were unaccounted for when we went to Okmulgee in May, 1901, and I couldn't say whether the initiative or first act in writing his regular census card was done by taking his name from the old census card or the tribal roll, or whether some one appeared and asked for his enrollment, but I have no recollection of anybody having appeared and asked for his enrollment, and I have carefully searched the records in the office of the Commission and have been unable to find any record showing that anybody appeared and asked for his enrollment, and I have no recollection of any one having so appeared. We were endeavoring on that occasion to put on cards the names of all unaccounted for citizens. The plan of the Commission in preparing the final roll was to place on a so-called schedule approximately 500 names and to transmit such schedules, transmitting one at a time, to the Secretary of the Interior for approval and the so-called schedules when approved became the final roll. This schedule was made in quadruplicate, one copy for the Secretary of the Interior, one for the Commission of Indian Affairs, one for the Dawes Commission and the other for the chief of the tribe. I had to do with the prep-

aration of these schedules, and with the schedule containing the name of Thlocco, I think. I would have to say that after Thlocco's name was listed on the card at Okmulgee on May 24, 1901, there was some investigation upon the question as to whether or not he was living or dead on April 1, 1899, because it was a prerequisite to their right to enrollment that they be living on that date, and the Commission would have to be satisfied, or have information of some kind, that he was living on that date. We were, however, often imposed upon. The handwriting on the Thlocco card made in mine. It was made up in its entirety in Okmulgee on May 24, 1901, and was completed on that day. Some cards were not

69 completed that day. In cases where cards were completed at

time I don't think that was an end of a determination of the question as to their right to enrollment, but it was the end of the listing for enrollment, but oftentimes I remember we would get information afterwards, and before transmission of the final card, that the person so listed was not living on April 1, 1899, and in such cases where we had filled out all the information on the card the matter of the right of the person, whose name appeared thereon, to enrollment was treated as settled unless we obtained further information which somebody voluntarily gave, but where said cards were not completed we afterwards sent out identification parties to make inquiries, and I couldn't say that after May 25, 1901, there was no investigation in Thlocco's case, but I would say that the conclusion that we come to over at Okmulgee had not been changed by any one appearing or offering any evidence to the contrary.

We knew that Thlocco was dead and we apparently were satisfied at Okmulgee that he was living on April 1, 1899, but that did not preclude further investigation. I was satisfied of that before I prepared the schedule and submitted it to Mr. Bixby, but I don't know what satisfied me. We would ask Town Kings and Town Chiefs or Warriors when they came in, and anybody else, if they knew that, and most of the Creeks had selected their allotments by that time and we could tell whether they were living or dead on April 1, 1899, by the allotment records, for they began taking allotments on April 1899. There were no approvals of enrollment until some time in 1902.

"Q. Mr. Merrick, have you talked with me about this case? You gave a statement to me in my office as to what the facts purport to be, did you not, in this case, on February 12th of this year, through Miss Freeman as stenographer?

A. I remember of making a statement there in your office, sir.

Q. Did you not answer the question which I will read to you in the manner in which I will read it, 'Now, what would you say to whether in the Thlocco case there was any investigation made as to whether he was living or dead on April 1, 1899, at or subsequent to the date on which you made up his written census at Okmulgee,' did you not answer that in this way: 'I would say there was none positively'?

A. Well, that agrees with what I said a few minutes ago; I can't say but there evidently was some further investigation.

Q. I am asking if you didn't answer that question in that way?

A. Well, if you have it that way I guess I did, Mr. German. I can remember of no investigation.

Q. You have no recollection of any investigation?

A. I have none, no, sir, absolutely none.

Q. Was what you told me there the truth?

A. Yes, sir, I don't know. I can't recollect of any investigation.

70 Q. Isn't it a fact, Mr. Merrick, that you took the name of Thlocco from the old census card when you made up this card.

A. I used the old census card I am certain of that, yes, sir, because that gave me the parentage and degree of blood."

I will have to say that in view of the fact that the age on the old census card is given as 40 and that on the new as 35, and the postoffice is different, that I must have had some information other than the old census card. The old census card was secured, I think, by Mr. Hopkins when he was out in the field and they were made for persons then living. On the last three or four days before May 25, 1901, people, the Town Kings, the Town Warriors or prominent Creek citizens, would appear in behalf of others and ask to have certain persons listed, but if no one appeared then we took these tribal rolls and just took the name that appeared on the roll and the tribal enrollment and made a census card for them, but where we had an old census card we had other data, we had the parentage, the blood and the age. As a general rule the cards we made up then were completed because we had that information from the old census cards, but I would think that in all cases where the card was completed in every respect over there that some one must have appeared, because those old census cards were made prior to April 1, 1899, and we didn't know whether they were living or dead. I can't remember whether I personally learned anything about whether Thlocco was living or dead on April 1, 1899, I don't remember it if I did.

On cross-examination EDWARD MERRICK testified substantially as follows:

There were a good many Snake Indians who would not come in to allot. We were trying to complete the listing for enrollment; there was an order made by the United States Court and the marshal was there with his deputies for the purpose of getting these Indians in so we could elicit such information as we could get from them. I wouldn't say that we were there at Okmulgee for the sole purpose of determining the question as to what Indians died on or after April 1, 1899; that question was considered by us in each and every case; that was the main question at that time; that was one of them. I never listed any man for enrollment without some information or evidence. It was our practice to have information from some direction before we would complete the card

and if we found an Indian whom we couldn't get any information about with reference to April 1, 1899, we left his card uncompleted and we brought a number of cards from Okmulgee which we hadn't completed and the reason we left them over was because we couldn't get evidence that satisfied us with reference to whether they died prior to April 1, 1899. We left them uncompleted

71 where we got no information at all about them, but where

we had information as to their being then living or had information as to whether they died prior to April 1, 1899, we completed the card, if we thought they were entitled to enrollment, but if we didn't have such information we left it for further investigation and a large number were left over for further identification. If no one appeared there for the further listing of a name that appeared on the roll, that is, the 1890 and 1895 authenticated Creek tribal rolls, the rolls they made payment under, we took that roll and copied the name from it, indicating the tribal enrollment, that is, the tribal town, if it was Hilliby Canadian all we could put down would be the name of the Indian and Hilliby Canadian and the number that appeared on the tribal roll, but we would have nothing as to the age, blood or parentage.

"Q. Now then when you made this investigation with reference to April 1, 1899, you got such information as you could, didn't you?

A. Yes, sir, we tried to get all that was necessary.

Q. Sometimes the kings of a particular town would come in, wouldn't they?

A. Yes, sir.

Q. And gave you this information?

A. Sometimes individual Indians would come in and give you the information.

Q. Is that so?

A. Yes, sir.

Q. Sometimes you would get it from one source and sometimes from another source, isn't that true (true)?

A. Yes, sir.

Q. But your invariable custom and practice was to never fill out one of the cards until you had some information from some source with reference to the question as to whether he was living or whether he died prior to April 1, 1899, isn't that true?

A. I would say that it is.

Q. Then, as a matter of fact, Mr. Merrick, you never as clerk of that Commission ever arbitrarily listed any man, did you?

A. No, sir, I don't think I ever arbitrarily enrolled a person.

Q. You never enrolled any man, Mr. Merrick, without some evidence, did you?

A. I don't think so, no, sir, not knowingly."

When these men were listed for enrollment, as I have said, we would collect a batch of them and before they were sent to Washington the clerks and Mr. Bixby, the Chairman of the Commission, would get together and go over every one of them. I would take the cards and whatever we had to Mr. Bixby and he usually went

them with me and he compared the cards and all the data before they were sent to Washington.

Now you never listed any man solely because he was on the roll of 1895, did you?

A. No, sir.

Q. You just took that to find his quantum of blood, didn't you?

A. Listen, judge, as I said the last three or four days we had all names but we never completed the schedule.

Q. Or purely from the roll as it stands?

A. Yes, sir.

Q. You required some separate individual evidence outside of the roll before you would complete (complete) that schedule?

A. Yes, sir, that roll is dated 1895.

Q. Now I would like to have that old census card. Now I want to look at this Barney Thlocco there and then this there the card and show the court, please, the matters of difference between those two cards. What is this?

A. May 24, 1901. This is the photographic copy of that."

By Mr. Stuart: Let these be marked defendant's Exhibits Nos. 1 and 2 on cross-examination.

Defendant's Exhibit No. 1 is identical in words and figures as government's Exhibit No. 1, set forth in full hereinbefore.

Defendant's Exhibit No. 2 is in words and figures as follows, wit:

[See insert herewith for photographic reproduction of Defendants Exhibit No. 2, marked page 72½.]

Family No 438

Wenok

Wewoka

District.

CARD

~~Page~~ No. 2866

Family.	Members of Family.	Relati' ship.	Age.	Sex.	Proper's. of Blood.	Post Office.	District	Remarks
Wenney	Annie		40 M	F	Full Fox Agency	Wewoka	Tukabatcaee	
			2 15	F	"	"	Thlewaithle	"
						-		
						-		
Barney Thlocos, son of Hilibubbe Aniatta Hagos (dead) on Thlewaithle roll, and Li da (dead) on Tuckabatchee roll.								
Anne daughter of Barney Thlocos by Hagos (dead) on Thlewaithle roll.								
EW 456,								



Department of the Interior, Office of Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Cherokee, Chickasaw, Cherokee, Creek and Seminole tribes of Indians and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of old Creek Indian census card No. 2866.

(Signed)

GABE E. PARKER,
Superintendent for the Five Civilized Tribes.

May 3, 1915. C. H. D.

By the Court: Will take a recess until tomorrow morning at ten o'clock.

Whereupon an adjournment was taken until tomorrow morning at ten o'clock.

And thereupon court re-convened May 7, 1915, at 10:00 o'clock pursuant to adjournment, and the following proceedings were had:

73 And thereupon EDWARD MERRICK was recalled for further cross-examination.

By Mr. Stuart: Your Honor, we have no further questions.

On redirect examination EDWARD MERRICK testified substantially as follows:

I mean by unaccounted for citizens, names on the 1890 and 1895 authenticated tribal rolls who had not up to that time been listed for enrollment or placed on a card or disposed of in some manner. The Creek Nation Council was in session at Okmulgee when we reached the point of having several hundred names that were unaccounted for and not listed on any card and I understood that the Commission had asked the council to withhold taking action on the Original Creek Treaty until we could list all these unaccounted for names, and we listed them and we did that as rapidly as we could until we completed it, working early and late, one or two nights until twelve o'clock.

"Q. Now let me ask you this: Did you enroll during that two or three days there when you were listing these names that were unaccounted for, did you list those names for enrollment when you were satisfied they were living on April 1, 1899, or did you list them when you were not satisfied that they were dead on April 1, 1899?

A. We listed every name unaccounted for that was on the 1890 and 1895 rolls. A great many of them we didn't know whether they were living or dead and we didn't know when they died if dead.

Q. Now it was under that circumstance that you listed the name of Barney Thlocco?



Microcard Editions

An Indian Head Company
A Division of Information Handling Services

CARD 2

A. He was one of the unaccounted for."

The descriptive features which we placed on the census cards were the age, the blood, tribal enrollment and parentage.

"Q. Now when you completely filled out a card it meant that you had determined that the person was entitled to enrollment, did it not?

A. Not necessarily determined that he was entitled to enrollment but determined the fact that we thought he was entitled to be enlisted for enrollment. We listed these people for enrollment and then later we made up the schedules and they became enrolled citizens when we forwarded the schedules to the Department and they were approved.

Q. You made up your schedules from the completed census cards, didn't you?

A. Yes, sir."

By the Witness: I want to correct a statement I made yesterday. "I understood Mr. German referred to a statement that I said positively no testimony had been taken in that case and I understood him to say possibly, and possibly is what I should have said if I didn't say it. I said possibly no evidence was taken in this case."

On recross-examination said witness testified substantially as follows:

I repeat and say that the Commission must have been satisfied that Thlocco was living on April 1, 1899, or the name would not have been submitted.

"Q. Do you know, without referring to any particular fact, that you never included any man's name in the schedule without taking evidence, did you?"

By Mr. German: We object to that as speculative.

By the Court: It is proper cross-examination, I think.

By Mr. German: We except.

Q. Isn't that a fact?

A. That is a fact that we had information that we thought we could rely upon that that person was living on April 1, 1899.

Q. And you always got that information before you submitted it?

A. I think we did or tried to. We were often imposed upon.

Q. That isn't the point, did you take the evidence in every case before it was scheduled?

A. We got information somewhere, yes, sir.

Q. Before this schedule? Yes, sir. That is all. Well, there is just one question, your honor. I started to do that yesterday by exhibit. There is a difference between the last card of Barney Thlocco and the old census card, isn't there?

A. There is in two particulars I think.

Q. In two particulars. Now you couldn't have gotten those additional facts without additional information could you?

A. Undoubtedly somebody gave us that information.

Q. And that now convinces you does it, Mr. Merrick, that you did make an investigation of Barney Thlocco's case in Okmulgee?

A. Well it seems that someone connected with the Commission did.

Q. Somewhere there was an investigation?

A. Yes, sir.

Redirect examination by Mr. German:

Q. That additional information; what was it?

A. There is a difference in the age.

Q. What is that difference?

A. I think on the old census card the age is given as forty and on the field card it has the age given as thirty-five.

Q. Field card, what do you mean by that?

A. Well that is the regular census card, the age is given as thirty-five.

Q. That would be some information then on the question of the age, wouldn't it?

A. Yes, sir, all the other information could have been had from the old card.

75 Q. What other information did you mention?

A. I think the postoffice on the old card was Sac and Fox Agency and the new one Arbeka.

Q. Now that would be information as to his postoffice?

A. Yes, sir.

Q. What information did you receive as to whether Thlocco was living or dead on April 1, 1899?

A. Well, sir, I couldn't answer that except in one way. I can tell you all I know about it. That when we wrote these cards over and listed these people for enrollment we *have* before us the authenticated tribal roll of the Creek Nation and when we listed these persons we noted that on the card, our field number, and that is in my handwriting and opposite the name of Barney Thlocco appears in lead pencil 'Died in 1900' and I know that was there before I wrote the card because it was written in the place where I would have placed the number had that writing not been there, and I placed the number right above it. And possibly with that notation it may be no evidence was given at Okmulgee on that day so far as listing this fellow because we know he was alive in 1897 or 1898 because Mr. Hopkins listed him for enrollment he was living. Then later there was a notation made on the 1895 roll 'Died in 1900.' That is the reason I stated, Mr. German, that possibly there need be no evidence given there as to those facts, and I would say that that is possibly true.

Q. You are basing your statement, are you not, that they must have had some evidence as to whether he was living or dead *or* (on) April 1, 1899, merely because of your theory that the Commission would not have enrolled him if they had not had that information?

A. Well, yes, sir, to a great extent that was our theory, that was our plan, of course, to satisfy ourselves that they were living on April 1, 1899."

On examination by the court said witness testified substantially as follows:

This notation, "Died in 1900," appeared on the 1895 pay roll of Tuckabachie Town opposite the name of Barney Thlocco. It is just a lead pencil notation and I think it is in Mr. Hopkins' handwriting; it appeared there at the time I was listing that name for enrollment and the reason I know that is that where this notation appears is the place where I would have placed the field number of our census card, and the notation being there, in order not to obliterate it, I put the field number above it out of the usual place, so that I know the notation was there when we were listing these people in May, 1901.

Witness excused.

76 And thereupon PHILLIP B. HOPKINS was called and sworn as a witness on behalf of the Government, and on direct examination testified substantially as follows:

My name is Phillip B. Hopkins, and I reside at Muskogee, Oklahoma. I was connected officially with the Dawes Commission from the fall of 1897 until some time in the spring of 1903, with the exception of six months in the middle of the year 1900. The title of my position was Chief Clerk, Chief Attorney. I was principally in charge of the Creek enrollment work, there was a census of the Creek Indians taken by the Commission beginning in the fall of 1897, there being a party sent out for that purpose. Defendants' Exhibit No. 2 appears to be in my handwriting. It is a photographic copy. I don't think there can be any question but what the card was made out some time between the middle of October, 1897, and December 20th or 25th, 1897.

By Mr. German: Your honor, we offer this in evidence as Government's Exhibit No. 2.

By Mr. Shea: There is no objection.

By the Court: It may be admitted.

Government's Exhibit No. 8 is in words and figures as follows:

This exhibit is the same instrument as defendants' Exhibit No. 2, hereinbefore set out in full.

I remember the occasion of the National Council of the Creek Nation ratifying the Original Creek Agreement, which is the Act of Congress approved March 1, 1901, and ratified by the National Creek Council May 25, 1901. I was in the party that was sent by the Commission to Okmulgee just prior to the ratification of that treaty. My recollection is that we arrived in advance of the meeting of the council. This was approximately a couple of weeks before May 25, 1901. The headquarters of the Commission were in Muskogee; Okmulgee was the capital of the Creek Nation. The purpose of our party there was to look after the ratification of the treaty and for the purpose of enrollment. Mr. Bixby, Chairman of the Commission, Mr. Merrick, Mr. Hastain and others of the Commission were there. My recollection is we had practically the entire force who were interested in Creek enrollment work and Creek allotment work

over there. There had already been a large number of citizens enrolled and we proceeded with the work of listing for enrollment citizens, or names upon the tribal rolls, who had not been disposed of, so far as being listed for enrollment was concerned. There were a number at that time who had not made any appearance and for whom no application for enrollment had been made. In considering the proposed Creek Agreement the question was raised by officers of the tribe that the first sentence of section 28 might be construed to mean that the roll we were making could not be added to after the date of the ratification of the treaty, that sentence reads "No person except as herein provided, shall be added to the rolls of citizenship of said tribe after the date of this agreement, and no person whomsoever shall be added to said rolls after the ratification of this agreement." As a result of the possibility of their construction being correct, we entered tentatively on the census card, or census cards, the names that appeared upon the tribal rolls that had not been listed for enrollment; they were so listed on the regular census cards. When we finished listing for enrollment those we did have information about, we had some that we did not have information about and we listed them because of the possibility of the construction of the treaty that some of the council members contended for. The practice of the Commission and the rule had been that all adults should appear in person and apply for enrollment. We accepted applications by one person for another only in the case of minor children, from parents and guardians and we had continued the practice up to that time. For practically 60 days we had had different parties out using every means at our disposal to get these people to come in for enrollment and just prior to the ratification of this agreement, if I remember, there were still a number who had not appeared whose names did not indicate that they appeared and their names were entered on one of these new census cards, the regular census cards. Officers of the Creek Nation said "what is to become of those who haven't yet appeared?" and that if the agreement is ratified some people contend that they never would have a chance to get on the roll and that they would like to have their names entered up. Just what information we got as to those people I can't tell now, but there were representatives of the Creek Nation present and the Creek attorney; the Town Kings were all there at that meeting and we endeavored to get all the information we could; if there were any names concerning whom we couldn't get information at that time I can't recall it; still it might be possible. If there had been a few names or a number of names on the tribal roll concerning whom we couldn't get information from those who were present at that time, officers of the tribe, members of the council or the Creek attorney, it may be possible to relieve their doubt as to whether they might be listed afterwards, that we entered even those on the cards for further investigation. I presume that there were a number of names entered on the cards just before the ratification of the treaty under the circumstances I have just related. The United States Marshal and his force, and our field forces were constantly bringing in people there who they found had not been

entered and were having them enrolled. So one card may have the name of the applicant who really appeared and the next the name of one who did not appear, but about whom we got information from someone else, or possibly enter his name tentatively on the card to relieve the doubt of some town king or officer. The 1895 authenticated pay roll of the Creek Nation consists of the separate pay rolls of the 47 different Creek towns, these 47 different town rolls taken together constitute the so-called 1895 pay roll; that roll, together with a similar roll made in 1890, were used by the Commission in its work of enrolling the Creek citizens. We got these rolls into our possession some time subsequent to the passage of the Curtis bill, the Act of June 28, 1898. The notation on the 1895 Tuckabachie Town roll opposite the name Barney Thlocco, "Died in 1900," is in my handwriting. Such notations as that came to be made on the tribal rolls because prior to the Original Creek Agreement ratified May 25, 1901, and while we were working under the Curtis bill, we were not authorized to enroll deceased Indians and were only enrolling living Indians, and when applicants came before us for enrollment who appeared to know anything about the members of the tribe or their families, or related families, we sought to get all the information we could as to their qualifications for enrollment, whether they were living or dead or were citizens by adoption, etc., and it was the practice at the time to note that on the tribal rolls that we were examining at the time so that it might put somebody on inquiry to get a record made in that case. We had gone into the field in 1897 and at other times and had taken a census, keeping our information on what is called the old census card, of which Government's Exhibit No. 8 is an example. With reference to the notation "Died in 1900," placed opposite Barney Thlocco's name on the 1895 tribal roll, I would say that evidently somebody gave me the information upon inquiry about Barney Thlocco, and possibly in the examination of this roll with reference to other names, that he had died in 1900. I don't know who may have given me that information. I don't know what use was made of the notation, but I know it was intended that when the Commission came to pass on that name for final record on the roll that an inquiry should be made as to when Thlocco died or whether he was dead and get the proper death affidavit and death proof. It was the practice to note it on the census card where the Commission had knowledge or proof of the death of the party. That note
79 on the census card generally consisted of a notation that proof of death was filed at such and such a time; it might not state the date of death, but the date when the proof was filed and referred to the record from which the date of death could be obtained.

The old census card was intended to be a record of the applicant for enrollment; the new census cards were not made up from the old cards, but the latter were referred to at times where there was doubt as to the number of children in the family or we wanted to get some additional information, for the rule after April 1, 1899, was that all people should appear in person, and make application for their enrollment and allotment, except in the case of minors, and we did not copy the new cards from the old cards unless there was no appli-

cation or appearance made for them. I think it must have been after the work was along toward completion that we had some of the clerks check the old cards with the new ones mainly to avoid duplication of names, for when we were in the field and had no tribal rolls whatever to guide us the Indian name was frequently given by a full-blood or by somebody representing another, when, as a matter of fact, the town kings had been carrying them on the tribal rolls under their English or school names. In each case, however, a new census card was supposed to be made and the old census card was not the thing from which the final roll was made.

There was a form of certificate of allotment prepared for use in the Creek Nation in cases of allotment made to the heirs of deceased citizens; there were three forms of patents prepared, one for the allotment of the homestead, another for the allotment of the surplus and one for allotments to the heirs of deceased citizens. It was the practice of the Commission in cases where the enrolled citizen was dead to allot the lands to his heirs.

By Mr. German: We offer in evidence Government's Exhibit No. 9.

By the Court: It may be admitted.

80 Government's Exhibit No. 9 is in words and figures as follows, to-wit:

[See insert herewith for photographic reproduction of Government's Exhibit No. 9, marked page 80½.]

Exhibit 9 Case 2007-17151

PAY R

Jucksabache Town.

NUMBER Last Present	NAME.	Per Capita.	Amount Paid.	SIGNATURES AND MARKS.
4103 1	George Smith 101	2621	1520	George Smith
4104 2	Ross Smith 914	2622		
4105 3	Mary Ann Smith 705	2614		
4106 4	Alfred Smith 1440	2623		
4107 5	Gorilene Smith 990	2521		
4108 6	Lucia Smith 103	2614		
4109 7	Lilly Smith 103	2614		
4110 8	Addie Smith 1980	2524	2510	
420 1	Molly Tiges ⑦	2435	44-2	
			14.40	Molly Tiges
421 1	Nancy Carr 455	2650		
422 2	Reese Peasey 455	2650		Molly Tiges
423 1	William Jimbo 529	1504	1440	Liza Misco
			14.40	by order of L. Ch
424 1	Sueky Webster 1573	2788	2760	Doris Webster
425 2	Edwards Webster 1533	2788		by husband
426 3	Barney Webster 1533	2788		
427 4	Chesney Webster 1533	2788	2760	
428 1	Martha S. Morton 501	797	5760	Martha S. Mort
429 2	Richard S. Morton 501	797		
430 2	Gem N. Morton 501	797		
430 4	Oscar M. Morton 501	797	5760	
433 1	Sallie Jones Dead Dead	5760	Washington J.	
434 2	Jemima Jones 1474	1378		rag house 285
435 3	Officer Jones 12865			
436 4	McKeeey Jones 12865		5-0	
437 1	Lucy Scott 1450	975	8640	Lambert Scott
438 2	Martha Scott 1450	975		
439 3	Jemima Scott 1450	975		
440 4	Willie Brown 1450	975		
441 5	Priscilla Brown 1450	975		
442 6	Mildred Brown 1450	975	0	
443	Barney Thelocated in 1900	2666	2600	G. Arabay ex
444	Jucksabache Dargo (Dead)	1000	1000	1000 1000 8.37

ROLL.

MARKS.	SIGNATURE OF WITNESS.	DATE OF RECEIPT.
✓ his mark	Cornelius Cain Oct. 2nd ✓	Oct. 2 nd 1895
✓ his mark	Cornelius Cain Oct. 3rd ✓	Oct. 3 rd 1895
✓ his mark	Cornelius Cain Oct. 8th ✓	Oct. 8 th 1895
✓ his mark	Cornelius Cain Oct. 2nd ✓	Oct. 2 nd 1895
✓ his mark	Cornelius Cain Oct. 3rd ✓	Oct. 3 rd 1895
✓ his mark	Cornelius Cain Oct. 3rd ✓	Oct. 3 rd 1895
✓ his mark	Cornelius Cain Oct. 2nd ✓	Oct. 2 nd 1895
✓ his mark	Cornelius Cain Oct. 11th ✓	Oct. 11 th 1895



Department of the Interior, Office of Superintendent for the Five Civilized Tribes, Muskogee, Oklahoma.

This is to certify that I am the office- having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole tribes of Indians and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of 1895 pay roll of Tuckabatchee Town in the Creek Nation of the Indian Territory as on file in this office, in so far as the same pertains to members 412 to 444 inclusive.

(Signed) GABE E. PARKER,
Superintendent for the Five Civilized Tribes.

May 3, 1915. C. H. D.

On cross-examination PHILLIP B. HOPKINS testified substantially as follows:

The names that were tentatively listed at Okmulgee for further investigation were in some manner kept track of. I don't recall as to their being kept separate or whether just provision was made with reference to them, but the Commission following that meeting at Okmulgee commenced in August thereafter and continually carried on an investigation for evidence as regards each name. I am satisfied that this is true, but I will say that the records of the Commission will show that fully.

"Q. Yes, sir. Under the practice of the Commission, Mr. Hopkins, can you not say that it is true that by sending out field parties to make inquiry and by the bringing in of witnesses you did finally, before the names were certified to the Secretary of the Interior for approval, take evidence in each case?

A. Yes, sir.

Q. Is that not true?

A. Yes, sir.

Q. Do you recall that in the month of August, following this Okmulgee meeting that the Commission sent out field parties, particularly in the western part of the Creek Nation, where Barney Thlocco had lived, to inquire and report back to the Commission whatever evidence they could find there with respect to whether the persons so tentatively enrolled were living on April 1, 1899;

81 A. I remember the field parties were sent out; I couldn't recall the exact month.

Q. Now that was after the Okmulgee meeting?

A. Yes, sir, there were parties out after that time and ultimately before any of these tentative enrollments were sent to the Secretary the Commission became satisfied on evidence that the names of the parties whose names were transmitted to the Secretary of the Interior for approval were entitled to enrollment."

By Mr. German: I object to that question as calling for a conclusion and opinion of the witness rather than of fact.

By the Court: It is proper cross-examination, I think.

By Mr. German: We except.

By Mr. Stone: Read the question.

(Question read.)

"A. Yes, sir.

Q. Mr. Hopkins, referring to the notation which you put on the 1895 roll, I understand you to mean that the effect of this notation there means that you had personally some evidence before you as to whether or not Barney Thlocco was living on April 1, 1899, else you would not have made the notation?

A. Evidence for information, yes, sir.

Q. And information which you got in the due course of affairs?

A. Yes, sir.

Q. Mr. Hopkins, what would you say as to whether or not the Commission arbitrarily enrolled any Creek citizens?"

By Mr. Davidson: We object to that as a conclusion.

By the Court: He may answer.

By Mr. Davidson: Exception.

"A. No, sir, it did not.

Q. Did they enroll any citizen without evidence?

A. No, sir, I don't believe, in fact I don't see how it would be possible to do it.

Q. In every single case if the applicant did not appear before you some one whom you regarded as reliable appeared for him and gave the evidence until the Commission was satisfied?

A. Yes, sir."

On re-direct examination PHILLIP B. HOPKINS testified:

"Q. Mr. Hopkins, you say the Commission didn't enroll anybody without evidence. Take the Thlocco case. The Commission had evidence that he was a citizen from the tribal rolls, didn't it, and from the old census card which you had made?

A. Yes, sir.

82 Q. That was evidence?

A. Yes, sir.

Q. When you say that no citizen was enrolled without evidence you mean that they didn't enroll anybody unless they had evidence of some kind that he was a citizen of the tribe?

A. Yes, sir.

Q. That is what you mean?

A. Yes, sir.

Q. Now you stated a while ago that when you acquired the information upon which you made that note on the tribal rolls that when you had information or evidence, as you put it, evidence or information as to whether he was living on April 1, 1899, when you acquired that information and made that note rather the time when you acquired that information must have been some time during the year 1900, must it not? I invite your attention to the fact that Mr. Merrick's notation here of the numbers 3456 does not appear directly

the name of Barney Thlocco as numbers do opposite the names of some others on this roll, but was evidently placed above the name you had made, 'Died in 1900,' and evidently because words 'Died in 1900' were in the way?

It appears to be that way.

and those figures 3456 were evidently placed there when he put the census card on May 24, 1901, were they not, as that identified name as being the same name that he placed on the census card on May 24, 1901. Would that not be true?

Yes, sir, I think so.

Then you must have obtained that information prior to the time that the census card was made on May 24, 1901?

I have no doubt but what all that information was given before that time, otherwise I would have noted it in the card and not on the tribal roll, or on both.

Yes, because it was the practice to note on the census card such information or the determination or conclusion that was reached when you enrolled a dead citizen, that is true?

Yes, sir, that is, when the record was complete, when we had sufficient testimony upon which to base an opinion, but a notation as this made here in pencil would have been made here in ink on the census card simply to put somebody on their guard or as to that case and not as a completed record in ink, as it was given by somebody who was not in position to make an affidavit.

Then that note was made so that the clerks or anybody connected with the Commission when they came to consider the case of a person who would make an investigation as to whether he was living or dead?

Yes, sir.

That was the purpose of it?

Yes, sir."

Mr. German: That is all, your honor.

Examination by the Court:

'Q. What do you mean, Mr. Hopkins, a short time ago in one of your answers when you said the records of the office would show whether evidence was taken in regard to this particular allotment?

Mr. German: Tentative enrollments, your honor.

The Court: Tentative enrollment after May, 1901.

Whenever any question was raised by the Creek Nation or its attorney with reference to the right to enrollment or for any reason whether they were living or dead or not, there was generally testimony taken in those cases. Just as in court here where an attorney is expecting to go up on appeal he has the evidence taken. There were a number of cases in which testimony was taken, sometimes with reference to a specific case; other cases where a witness was examined with reference to a great many others.

With reference to those people whose names up to March, 1901, had not been accounted for there were lists of those made and sent to the various town kings and sent to the king of the tribe and various inquiries made that way and report came back. Sometimes the party addressed came in and gave verbal testimony and if it seemed clear to the Commission it was probably not reduced to writing. If there was any question with reference to the matter it probably was reduced to writing; and I couldn't say whether this was one of those cases where testimony was taken or whether it is covered by one of those reports made by the various town kings or the chief of the tribe or not. I have referred to the fact that the records of the Commission contain a great deal of information with reference to cases that we had under consideration."

On further cross-examination the witness testified substantially as follows:

"Q. The written evidence to which you refer was taken just in that class of cases, was it not, where the right of the person was challenged some way, is that not true?

A. Or where a question had been seriously raised as to whether or not they were living on April 1, 1899.

Q. Many cases were investigated without any written record or evidence were there not?

A. Yes, sir, a great many cases were investigated."

I can't recall that it was later than the Okmulgee meeting that the Commission commenced to note on the census cards the date of death of the person. With reference to the patents the practice was to issue the patent in the name of the party according to the roll where no proof of death was filed with the Commission, or where the heirs had not appeared and filed proof of death and claimed the right to have the deed issued to them. The census cards

84 after they were first fully made out were always subject to additional record, to the notation of additional information, but the card may have been completed the first time it was made out. The applicant may have furnished the complete information. The Creek Commission and the Creek attorney may have vouched for the party; it may have been completed at that time and no other record made on it, except that it had been passed to the final roll, for until the roll was approved it was subject to the entry of any matter that affected the right to enrollment.

"Q. Is it not a fact that the record was never completed, that is all the entired(s) made until the Commission was satisfied of the right of a person to enrollment, subject, of course, to the further inquiry if a question arose?

A. I don't quite get your idea, Mr. Stone.

Q. Let me illustrate.

A. The Commission had to be satisfied from the records."

Referring to that class of persons who were tentatively listed at Okmulgee the cards were completed whether we were satisfied with the evidence or not at the time we got information necessary to complete the cards, but no doubt some of those cards made there

were made without accurate information as to the name of the father or mother, or matters that went to the identification, but the Commission never passed on a card until it was completed. We entered on the cards such information as we believed to be true at the time we gathered it, and if we gained other information with reference to other things necessary to enable the Commission to pass on the right to enrollment that was added on the card. It may have been picked up by piece meal over a year or two before the Commission was satisfied that the party was entitled to enrollment, but the records were made up for the purpose of the information of the Commission. The record was kept to show such information as was necessary to enable the Commission to reach a decision.

Witness excused.

Thereupon E. HASTAIN being called on behalf of the Government and sworn under oath testified on direct examination substantially as follows:

My name is E. Hastain. I reside at Muskogee and was an employee of the Dawes Commission from April, 1899, until, I think, 1902. I worked principally in the Creek enrollment division. I was at Okmulgee in May, 1901, when the Commission was there, while the Creek Council was in session, and I was aiding in 85 the work of enrolling Creek citizens. All the names that appeared on the 1890 and 1895 tribal rolls that had not been listed for enrollment were listed for enrollment there prior to May 25, 1901, is my recollection. The occasion for listing them was in order to satisfy the Creek Council who were to vote upon the ratification of the Creek Agreement because some of them feared that if they ratified this agreement there might be some citizens who were not enrolled and under section 28 of that treaty the Commission would not have authority to later enroll them. I assisted in making up the census cards on that occasion and there were approximately two thousand filled out during that month.

Before May 25, 1901, there were a large number on the tribal rolls who had not been listed for enrollment and we placed those names on census cards without a determination of the question as to whether they were living or dead on April 1, 1899; we had no information as to that. When we enroiled a deceased person we made a memorandum on the bottom of the census card that he was dead, giving the date, or, if we had a death affidavit, we would say "see death affidavit attached hereto or in jacket so and so." If we didn't have a death affidavit we simply made the memorandum in ink.

On cross examination said witness testified substantially as follows:

In the course of our work at Okmulgee when we had information that the name was entitled to go on the final rolls we completed the card, and if we didn't have the information or evidence, we didn't complete it. Where the cards were incomplete, if we had no further information than the tribal roll, we put the name, the page of the tribal roll on which it was found, and the name of the tribal town,

that was about all we could put on. In Barney Thlocco's case, if we had nothing except the tribal roll we would have to put on the census card "Barney Thlocco, 1890, Tuchagachie, page 238; No. 1 on 1890 roll as Barney Thlocco; No. 1 1895 pay roll No. 443," and down at the bottom right hand corner "May 24, 1901." If that card was completed at Okmulgee it indicates that the party who wrote the card was satisfied on that day that Thlocco was living on April 1, 1899, satisfied on some form of evidence "must have been, yes, sir." To complete the card we would have put on it the post-office address, age, sex, degree of blood, name of father, whether living or dead, name of mother, whether living or dead, and the towns to which they belonged, then any other information that we might have. There were two classes of cases at the Okmulgee meeting, one where we were satisfied on evidence and the cards were left incomplete, and where we were not satisfied we subsequently conducted an investigation to determine from

86 evidence the right to enrollment. I was clerk in charge of the

Creek enrollment division prior to the time we were at Okmulgee and subsequent thereto up until the time of my resignation and during that time I investigated as far as I could these incomplete cards and completed the enrollment; however, during the time that we were at Okmulgee we had a large force on that work and I did only a portion of that enrollment.

I superintended subsequent investigation but did it in the office. I didn't go out into the field, there were field parties who went out and I had nothing to do with them. Where there was anything attracted my attention to any claim which appeared to be doubtful I always proceeded to make an investigation and to take some sort of proof there in writing or verbally upon the point. So far as I was concerned and so far as my knowledge went there was in all cases some evidence upon the point as to whether the applicant or the citizen was living or dead on April 1, 1899, before the rolls were recommended to the Secretary for approval, that was my understanding of the practice of the department. In the month of May, 1901, the Commission sent out parties to the community where the Indians lived and brought them in in a great many instances where they had no means to travel and the United States Marshal assisted in that work to some extent. This enrollment at Okmulgee was done in the upstairs of the council house in a room across from the room known as the house of kings. Town kings and warriors were in attendance at the council.

"Q. And as you and Mr. Merrick sat there and enrolled citizens, is it not true that occasionally Mr. Bixby himself would come to you and give information that a particular citizen was entitled to enrollment or send to you a note to that effect?

A. I think that is true.

Q. Then upon his verbal statement or some written request he would send you, you would enroll a person?

A. That is true.

Q. Now as you were there in that line of work there was appearing before you almost constantly, were there not, or before Mr. Bixby,

minent men of the Creek Nation, heads of the different towns, own Kings, who were giving information as to the rights of citizens to be enrolled and as to whether or not persons were living April 1st, 1899?

A. Yes, sir, that is true.

Q. You were continually surrounded by persons informing you at that point, weren't you?

A. We were getting all the information we could from every source possible at that time.

Q. Well, they came before you almost constantly didn't they?

A. Yes, sir.

Q. And there was no written record made of that?

A. No, sir.

Q. Except a conclusion that you may have drawn from that?

A. We didn't make any written record except in contested cases.

Q. Where a charge had been made against an applicant?

A. Yes, sir.

Q. Now, how long after this Okmulgee meeting did you continue under the Commission to carry on this work of investigation to satisfy yourself in reference to those who had not had their enrollment completed at Okmulgee?

A. Some time during the year 1902 up until some time during that year.

Q. The Commission was engaged almost constantly in the Okmulgee meeting until some time in 1902, in the further investigation, where you had not become entirely satisfied at the Okmulgee meeting?

A. Yes, sir.

Q. Do you remember the names of any of the head men or Town Kings of the Tuckabachee Town?

A. I can't recall who was the Town King now of Tuckabachee Town.

Q. Do you know G. A. Alexander, formerly a member of the Townsite Commission?

A. I did know him, yes, sir.

Q. Do you recall whether or not he was personally there before Mr. Bixby on that occasion?

A. I can't say now. I don't remember.

Q. Can you say approximately how many witnesses appeared before the Commission at the Okmulgee hearing?

A. No, sir.

Q. There were hundreds weren't they, hundreds upon hundreds?

A. There were a great number.

Q. They gave these statements sometimes to you and sometimes to Mr. Merrick and sometimes to Mr. Bixby?

A. Well, there was Mr. Lieber, Mr. Beavers, I believe was also assisting; there was several engaged in enrolling there.

Q. And one of the particular points that you were constantly investigating was whether or not these persons were living on April 1st, 1899?

A. We always got that information wherever we could.

Q. And where you didn't get it in a satisfactory form you didn't complete the cards?

A. No, sir, we just—As I stated."

On redirect examination said witness testified substantially as follows:

I think we must have had in mind prior to May 25th the question as to whether citizens were living or dead on April 1, 1899, because the agreement had been enacted by Congress and was pending for ratification by the Creek Council and we knew what

was in that agreement and we were framing our work so
88 that if it was ratified we would not have it to do over again.

I am sure we did that, and it is my recollection that where we found that a person was dead at that time and that he was living on April 1, 1899, that fact was noted on the census card.

"Q. Now if you didn't have information on that subject and you completed a card there, you treated that person as living at the time you made the card?

A. Yes, sir.

Q. And enrolled him as a living citizen?

A. Yes, sir."

And thereupon court takes a recess for the noon hour.

And thereafter court having convened pursuant to adjournment further proceedings herein were had as follows:

And thereupon E. HASTAIN being recalled for further examination on further redirect examination testified substantially as follows:

When I stated on cross examination that the fact that this census card of Thlocco's may have been completely filled out on May 24, 1901, meant that Thlocco was living on that date, I referred to the date May 24, 1901, and when I stated on cross examination that the Commission did not make any written records except in contest cases I meant by that written records independent of the census card and the record made thereon, I meant a record by which the witness was sworn and his testimony taken down in shorthand and transcribed.

On recross examination said witness testified substantially as follows:

There had been an old census card in this case and there was another census card and it was fully made out.

"Q. You have seen it here, haven't you?

A. Yes, sir.

Q. And as a clerk of the Dawes Commission, remembering your duties there and the manner in which you conducted your work, when that card was presented to you, you assumed from the practice

which then prevailed, don't you, that proof had been made of
anything necessary to put that man on the roll?
. I do."

Witness excused.

And thereupon EDWARD MERRICK being recalled for further cross examination testified substantially as follows:
My explanation of my failure to note on the final census card Barney Thlocco the fact of his death would be that at that time we had no proof of death and regular affidavit made on the card that we had. I don't think that during the process of enrollment we made a notation on a card showing the death with ink. At times we would make a note with a soft lead pencil on there; verbal information, but when we noted on the card the date when he died, I think in all cases we had a proof of death in affidavit form. I don't think we would put the notation on there in ink until we had some proof, until we got the affidavit, I think was the practice.

It is possible that for want of the affidavit stating the exact time of death we didn't make any notation on that card, and I think that is in accord with the practice.

In redirect examination said witness testified:

Q. In other words you wanted proof of death?

A. Yes, sir, we wanted proof of death when we made the notation on there.

Q. So that the question could be determined?

A. Yes, sir."

Recross-examination by Mr. Stone:

Q. You mean proof of the death or proof of the date of the death that you wanted from the affidavit?

A. Affidavit of the death, date of the death, the month, year and

A. Usually when we got that we would make a notation on the card in ink; a permanent record."

Witness excused.

And thereupon JOHN G. LIEBER being called on behalf of the government and sworn under oath testified on direct examination substantially as follows:

My name is John G. Lieber. I live north of Muskogee. I am a member of the bar of Muskogee. From May 31, 1899, until sometime in 1904 I was connected with the Dawes Commission, a part of the time as a clerk in the Creek land office and the remainder of the time in charge of the allotment contest division. At times I was connected with the Creek enrollment work and familiar with the work up until sometime in 1901. I was a member of the field party at Okmulgee in May, 1901. I don't remember all the members of the party, but Mr. Bixby, Mr. Hopkins, Mr. Hastain, Mr. Merrick and Mr. Beaver were there. I

don't know whether Mr. Beaver is living or not, he lived here several years ago. His home is in Arkansas. The party that went to Okmulgee was sent there because the Indians would be there for the Creek Council was called in session for the purpose of passing on a treaty which had been enacted by Congress, that is, the warriors and kings, as they called them, would be there, and an effort was to be made to get as many people enrolled as possible, in fact all if we could, by that time. A great many had been enrolled, but there was still a number who had not been and that was the object of our party over there. My particular work was in connection with the allotment contest work, but there was not very much of that kind of work at that time and I was frequently used in connection with the work of enrollment. I helped the boys who were at that work in putting the people on cards. I wrote a few cards. We got the data when we first went over there and until about the 22nd or 23rd of May, 1901, from the town kings and warriors and citizens themselves that would come to be enrolled. Another source of information was from the tribal rolls and the old census cards. The data that was put on the new census cards consisted of the name of the citizen as it appeared on the tribal roll, or if it appeared differently on the old census card it was put on that way, and the town that he belonged to, and the tribal roll that he was on, that is, the 1890 and 1895 Creek authenticated rolls, as we called them; all of that information we could get from the rolls without outside information. We couldn't tell the family relationship from the tribal rolls, but that was information which was put on the card if we could get it when identifying a citizen.

On the last two days before the treaty was ratified we didn't consider it necessary in order to complete a card showing identification of a citizen to show on that card whether he was living or dead. The date for the ratification of the treaty had been agreed upon among the members of council, that is, May 25, 1901, and the Commission found that there was a large number of people on the Creek tribal rolls who had not been accounted for and something had to be done to preserve their rights for them if they had any and were living, so the last two or three days before the treaty was ratified we took the 1890 and 1895 rolls and put everybody on a census card who was on those rolls unaccounted for unless we had information at that time that they were not entitled to enrollment. This was done on the theory that the treaty provided that no per-

son could be enrolled after the ratification of the agreement.
91 We put them on because of the theory that if they were not entitled to enrollment they could be stricken from the roll afterwards upon investigation as to whether or not they were living April 1, 1899, then if any investigations were made as to whether they were living April 1, 1899, or not and that fact determined by the Commission it would either have appeared on the census card, or if sworn testimony was taken it would have been transcribed and the record preserved, that was the universal rule and practice of the Commission. I don't remember of a case where there was a contest as to citizenship rights but that testimony was

en and reduced to writing. In cases where there were trials contests evidence was taken and preserved; in cases in which there was no trial or hearing of contest and where there was no evidence preserved the record was made up by noting on the card blank if they enrolled a deceased citizen. If they knew at the time the roll was made that he was dead it would be noted on the card blank. If the census card was complete and contained no notation that the citizen was dead that would indicate that he was living at the time the card was made; the fact that he was on the roll and there was no notation made that he was dead, then he was presumed to be living. I don't mean to say that that notation was made on the tribal roll, it was made on the census card.

I have no recollection at this time about the enrollment of Barney Thlocco at Okmulgee, that is no independent recollection of that enrollment. I have seen the tribal roll containing the name of Barney Thlocco. The notation in pencil opposite his name "died in 1900" on the 1895 tribal roll I have seen. I probably saw it at Okmulgee at the time he was enrolled there, and I saw it again today. Such a notation as that on the tribal roll meant that the clerk making the enrollment should be on his guard and make inquiry, that is all I meant. It meant that somebody had furnished, in that case Mr. Hopkins, information that that party was dead, or whatever notation was made on the roll, but it simply served to put the Commission on their guard and suggested further inquiry, further investigation. Looking at the census card of Barney Thlocco and eliminating those red lines which were put on there in 1906, there is nothing on that card to indicate whether he was living or dead on May 25, 1901, nor to indicate whether or not an investigation was made afterwards as to his death. I want to modify that by saying that the card itself as made out would indicate that he was alive on May 25, 1901, when you eliminate the notation "No. 1 stricken from approved roll by authority of Department December 13, 1906."

The party left Okmulgee within a few days after the treaty was ratified on May 25, 1901. I don't think any further work was done over there in the matter of enrollment after that. I think the last day upon which any enrollment work was done at Okmulgee was on the 24th day of May, the day before the treaty was ratified.

On cross examination said witness testified substantially as follows:

I was not in the enrollment division except occasionally. My business was confined to the allotment division and the management of allotment contests. I don't know what the custom [—] the clerks were out there except as to where I had personal knowledge of what they did and what they did. I know how Mr. Merrick did it. I was there when he fixed a few cards and know what the custom was. Without looking over the cards I can't tell you any case which he did in the way which I say he fixed it. If I were to see the cards I could tell you every one that he made out. He made out this

card it is in his handwriting and it appears to be a completed card. The cards that were incompletely were left incomplete because we could not get all the information that we wanted to put on the cards. Those that were complete, whether we called it complete or not, were filled out from information that we got from some place. This is a completed card which has been offered in evidence here and presented to me for examination with reference to the enrollment of Barney Thlocco appears to have been made out from information given from somebody. I am not familiar enough with the old census cards to say whether all the information on this new card could have been obtained from the old census cards and the tribal rolls or not. The age on the old census card is 40 and the postoffice address is Sac and Fox Agency; the age on this last card is 35 and the postoffice address is Arbeka.

"Q. Now could you tell whether or not the clerk in making up this last card got some additional information over and above what was on the first card?

By Mr. Davidson: We object to that as purely speculative.

By Mr. Stuart: Your honor, I am cross examining this witness.

By the Court: They are cross examining.

By Mr. Davidson: Exception.

A. Yes, he certainly must have."

That indicates to me that the man making out this last census card got information some place.

93 "Q. As a matter of fact, Mr. Lieber this card shows that the man made an investigation independent of the first census card, don't it?

A. Judge I will say that on that date, the 24th day of May and the day before that, there was no investigation made of anybody's enrollment except information that was voluntarily given there by the Town Kings or somebody that was present. We hadn't time to investigate.

Q. Well then I will leave out the word investigate; I will say didn't *be* get some evidence?

A. Yes, he got some information from somebody.

Q. He got then some information independent of the first census card and by that information, independent of the first census card, he made out the last census card, didn't he Mr. Lieber?

A. Yes, sir."

Yes there is a notation on the 1895 roll "died in 1900" I think it is died and not dead. Yes, sir, this roll was available to the clerks every minute and hour during the day. They did not go to it to find out the quantum of blood but to find out what was on it. I don't think it shows the blood. That roll was apparently there in Okmulgee. That notation meant that information was furnished that he died in 1900. Yes, sir, I told the court a minute ago that that notation was to put the clerk on inquiry, he was to investigate it—on inquiry as to anything affecting the enrollment of the applicant. It was to put the clerk on information that Mr. Hopkins had been informed that he was a dead man, and that would necessitate

xamination on the part of that clerk, if he does his duty, to find whether he was dead and when he died, if he had time to do it. He was dead it was an invitation to him to make an investigation any time except those last two days before the treaty was ratified. notwithstanding the fact that his notation was called to the attention of the clerk and was an invitation to investigate; notwithstanding the fact that the clerk gave him a full census card showing anything necessary on the full card I say he didn't investigate as to death because if he had had any positive information of the death that party he would have noted it on the card and would have in an affidavit. It was Mr. Merrick's custom when he had positive proof of the death to make a notation on the card that he wrote

In case he had proof of the death but not proof of the date of death, that is, that he died after April 1, 1899, but didn't know whether it was April, June or July he would put it on there in pencil. If he didn't have positive and complete information he would put it on in pencil. I stayed with the Commission a long time after the census cards were made out, and followed this work a long time. I can't tell you whether when these census cards that we made out at Okmulgee were passed up to the Commission, the Commission thereafter investigated every one of them before they scheduled them and sent them to Washington, because I wasn't working in that department. Their custom was to investigate every man, of course, that they put on the rolls. Their custom was to investigate every one of these census rolls that we made out there before they sent them to Washington final and they got all the information they could from everyone they could, even after the cards were made out. It was their custom to do that before they sent the schedule of names to Washington.

The last two days there at Okmulgee the town kings were at the council and were in our office frequently, as were also different men from the different towns, giving information as to what they knew about those Indians. I think the Creek attorney at that time was B. Dawes. I can't say whether he was there. In those days the Creek Nation had a commission that attended to those enrollments, I believe it was there. The members of the Dawes Commission at that time, except Mr. Bixby and Mr. Breckenridge, are dead. I really don't know whether Mr. Breckenridge was at Okmulgee or not.

On redirect examination said witness testified substantially as follows:

The discrepancy between the old census card and the new census card in the matter of age and postoffice address which indicates that information had come to the party conducting the enrollment work, does not indicate that any information had come as to Thlocco's birth. All I know as to the making of the final rolls that went to Washington is as to how they were made, I did not assist in making the final rolls.

Witness excused.

And thereupon TAMS BIXBY being called on behalf of the Government and sworn on oath testified on direct examination in substance as follows:

My name is Tams Bixby, I live in Muskogee. In 1899 I was a member of the Dawes Commission, at that time I believe I was acting secretary, and I was a member of the Commission in May, 1901. I do not remember whether I was chairman or acting chairman at that time, but I was one or the other. In May, 1901, the Commission was composed of myself, Mr. McKennan, Mr. Needles and Mr.

Dawes, I think. In May, 1901, there was an enrolling party
95 went from the Commission to Okmulgee for the purpose of listing names of Creek Indians for enrollment. I was there. I do not remember whether any other members of the Commission were there, but I think not. My best judgment is that they were there but did not stay. They may have come and gone. I was there on May 24, 1901. I can't say whether any other member of the Commission was there on that day. P. B. Hopkins was then in the employ of the Commission as a clerk. My recollection is that Edward Merrick and Mr. Hastain were there, but I am sure I don't remember whether John G. Lieber was or not. They were doing the general work incumbent on the party as clerks. By the term listing for enrollment we mean the preparation of census cards. We were putting names of citizens on cards. Referring to Government's Exhibit No. 1, which appears to be a photographic copy of the census card on which the name of Barney Thlocco appears, I have no recollection of any evidence of any character being presented to me the time of the preparation of that card on May 24, 1901, showing whether or not Barney Thlocco was living on April 1, 1899. If evidence had been presented to the Commission and considered at that time on the question whether Thlocco was living or dead and the Commission had decided it, we would not subsequent to that time have initiated an investigation I don't believe unless some matter had been brought to our attention which required an investigation. I don't know that anybody would have any more information concerning this particular matter now being inquired about by the court than myself, but I don't know what information they might have, but my judgment would be that there would not be any person that would have more information than me. I don't think of anybody that would have more information about this matter than I have.

On cross-examination said witness testified substantially as follows:

It really makes no difference whether I was chairman or acting chairman of the Commission, I was really chairman anyway. We went to Okmulgee for two purposes, first, to assist in the ratification of that treaty, for personally we wanted the treaty ratified, and second, to enroll those Indians, there were some Indians who had not been accounted for and we took our force to Okmulgee for the purpose of investigating and ascertaining who were entitled to enrollment. Yes, we had an enrollment clerk by the name of Hastain and

ther by the name of Merrick, who wrote out these cards. I was there a week or two of the time is my recollection. I wouldn't say that before any card was released as final I would get these men together and go over the list, but I went over the at different times, sometimes with one clerk and sometimes with other. I would get the clerk that made a particular card and go r it and before that card became effective I satisfied myself that man was entitled to enrollment. In most every case I satisfied self outside of the rolls (tribal rolls) some sort of information side of the rolls. A good many of those men were listed—enrolleed when we left Okmulgee and cards were completed, and some re not and we left them for subsequent identification. We went o a subsequent investigation as to those whose cards were not com-
plete and determined the facts as to them. I did not, to my knowl-
edge, ever enroll any man without taking some evidence, informa-
tion or eliciting some knowledge from some source other than the
rolls (tribal rolls) that he was entitled to enrollment and I never
permitted it to be done. My purpose was to find out whether a man
was entitled to enrollment and one of the factors in that determina-
tion was whether he died prior or subsequent to April 1, 1899. I
always ascertained that fact before I enrolled him. I always satisfied
my mind on that subject by evidence outside of the roll. (Here coun-
sel hands witness defendant's Exhibit No. 3 and witness examines
me.) I can't remember this letter. It says, "Acting Chairman." I
don't know whether I ever signed it or not. I wouldn't say, it pur-
ports to be signed by me. *I* [It] appears to be a letter from the
commission. It appears to be a certified copy. (Witness reads letter
himself.)

Defendant's Exhibit No. 3 is in words and figures as follows, to-
tally:

DEF'TS' EX. 3—Eq. 2017—5/7/15.

Copy.

MUSKOGEE, IND. TER., March 3, 1902.

The Honorable the Secretary of the Interior, Washington, D. C.

SIR: The Commission transmits herewith, for your approval, par-
tial roll of citizens by blood of the Creek Nation, numbered 8313 to
018, inclusive, whose names have been regularly listed for enroll-
ment on Creek Indian cards, numbered 2878 to 3227, inclusive, who
were living on the first day of April, 1899, or born to citizens so en-
titled to enrollment, up to and including the first day of July, 1900,
and then living, as provided by Act of Congress, approved March 1,
1901, and are found either upon the 1890 or 1895 authen-
7 ticated Creek Rolls, or who are descendants of persons whose
names are found upon said rolls, born since said rolls were
made; or were admitted to citizenship by the Commission to the
Five Civilized Tribes, or by the United States Court on appeal under
the provisions of Act of Congress approved June 10, 1896, or who
are descendants of persons so admitted, born since such admission;

or were duly and lawfully admitted to citizenship by the Creek National Council, or by the legally constituted Commissions and Courts of said Creek Nation, or who are descendants of persons so admitted, born since such admission.

Here follows, in same order as roll, table showing tribal enrollment (if found on rolls), and such other data as will enable complete identification of all:

No.	Name.	Roll.	Roll.	Town.	Remarks.
8592	Thlocco, Barney	1890	1895	Tukabatchee	*
	*	*	*	*	*

The Commission, after having thoroughly examined the rolls of the Creek Nation, and such evidence as has been submitted, touching the identification of the persons on roll herewith submitted, is of the opinion that all are entitled to enrollment as Creek citizens by blood, and should be so enrolled.

Respectfully submitted,

COMMISSION TO THE FIVE CIVILIZED TRIBES.

_____, Acting Chairman.

T. B. NEEDLES, Commissioner.

C. R. BRECKENRIDGE, Commissioner.

Through the Commissioner of Indian Affairs.

Department of the Interior, Office of Superintendent for the Five Civilized Tribes.

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians and the disposition of the land of said tribes and that the above and foregoing is a true and correct copy of letter press copy of a letter from the Commission to the Five Civilized Tribes to the Secretary of the Interior, dated March 3, 1902, transmitting a partial roll of citizens by blood of the Creek Nation, in so far as same pertains to the enrollment of Barney Thlocco, at roll No. 8592, which portion of said letter press copy is found in letter press copy book No. 1, at 98 pages 340, 351 and 367.

GABE E. PARKER,
Superintendent for the Five Civilized Tribes.

May 5, 1915.

"Q. Mr. Bixby, I will ask you whether that portion of the letter which you have just read was the character of statement you generally made with reference to schedule of names when you sent them to Washington to the Secretary of the Interior?

By Mr. Linebaugh: Just a moment, we object to -is as incompetent and inadmissible.

By the Court: That may be admitted.

By Mr. Linebaugh: We except.

A. Yes, sir, that is the character.

Q. Now assuming that that statement in there was the statement you generally made in writing these letters will you now state to the court whether or not you returned a schedule of each and every name to the Interior Department?

By Mr. Linebaugh: Just a minute, we object to that as incompetent and inadmissible.

By the Court: Overruled.

By Mr. Linebaugh: Exception.

A. Yes, sir.

Q. And when you returned that schedule I will ask you if as a matter of fact, you didn't advise the Department you had made a full and complete and perfect investigation of each and every case?

By Mr. Linebaugh: We object to that as incompetent and inadmissible.

By the Court: I think it is proper cross-examination.

By Mr. Linebaugh: We except. The court does not care for us to find any further reason.

By the Court: If you have any further reasons I will hear them.

By Mr. Linebaugh: If the court is satisfied.

By the Court: I am satisfied this is proper cross-examination.

A. Yes, sir.

Q. Then if you did Mr. Bixby when you sent every schedule to the Department state if that is what you stated that you had made a complete and perfect investigation of each and every case and did you mean that you had satisfied your Commission that each and every one of those men were entitled to enrollment?

99 By Mr. Linbeaugh: We object to that as incompetent and inadmissible.

By the Court: Overruled.

By Mr. Linebaugh: Exception.

A. Yes, sir.

Q. Then as a matter of fact Mr. Bixby, every name you sent into the Department of the Interior as a name to be enrolled and which had been enrolled as a member of the Creek Tribe has been investigated by some member of your Commission at some place and by evidence outside of the rolls a determination had been reached that that person was entitled to enrollment, ain't that so?

By Mr. Linebaugh: If the court please we object to that.

By the Court: He has asked if, as a matter of fact that state of facts existed. I think the witness may answer if he knows.

By Mr. Linebaugh: Exception.

A. Yes, sir, that is my opinion, my view.

Q. Don't you know it is a fact?

A. Yes, I know it is a fact.

Redirect examination by Mr. Linebaugh:

Q. How do you know it is a fact?

A. Well, I know it like I know any fact that I know. I know I was on that job all the time and I was satisfied that every name on the rolls was entitled to be on the rolls.

Q. Can you point out Mr. Bixby, or is there now in your mind any knowledge — any evidence that you received as to Barney Thlocco?

A. No, sir.

Q. Have you any knowledge at this time of any evidence of any character that you received as to whether Barney Thlocco was living April 1, 1899?

A. I haven't any recollection of anything now."

It is my recollection that at Okmulgee several incomplete cards were made and while I haven't refreshed my memory, yet as I remember it the treaty then under consideration contained a provision that after the ratification thereof no name should be added to the rolls of Creeks, and we were anxious to protect everybody's right that should be protected by listing them for enrollment. I have no recollection of making any agreement with the Creek council. The treaty then pending contained the provision I have mentioned and we listed such names as we had no information about for the purpose of

further identifying them later, getting such information as 100 we could as to whether they were living or dead. Both before and after May 24, 1901, we were investigating all the time as to those persons whose names we listed on incomplete cards. I have no doubt but what we would subsequently conduct an investigation as to those whose census cards were incomplete or as to the particular ones who we then listed as unaccounted for, not as to them only but we investigated all the time everybody that there was any doubt about. We certainly would have conducted an investigation upon our own initiative subsequent to that time with reference to the date of death, or the death, or the question as to whether a person was dead, even if at that time we were satisfied on that point, if anybody called our attention to it and said it should be done, any Creek attorney or town king or anybody that had any interest in the matter. For several days before May 25, 1901, we were listing unaccounted for names. We didn't know just when the treaty would be ratified. We were engaged in that work on May 25th and also in listing people that we did not have information about. If any man could be fully listed and enrolled we would do that of course, that is what we were there for. There would accompany each of the lists about which counsel have inquired from one name upward to sometimes hundreds, frequently as many as 500, as I recall it the schedule varied in size. Referring to the Barney Thlocco census card I would state that I am unable to say from reading it, or from recollection, when I determined that he was entitled to enrollment.

"Q. State from an examination of that card whether or not from

it your Commission could have determined whether on the day it was made, May 24, 1901, Barney Thlocco was living or dead?

A. Only from the fact that it was on the card and it had been presumably investigated as most of the Creek enrollments were verbally, verbal investigation by the clerk or the Commissioners. Frequently I sat with the clerks and other commissioners did and sometimes the clerks took the information by themselves.

Q. My question is whether or not from the card that fact could be determined?

A. I said it could not except from the information put on the cards.

Q. State whether from an examination of that card your Commission could have determined that Barney Thlocco was living on April 1, 1899?

A. Not from the writing on the card as indicated by the mere letters and figures.

Q. State whether there is any other record anywhere to your knowledge by which your Commission could have determined either of those two things, that is whether he was living on April 1, 1899, or May 24, 1901.

A. I know of none.

Q. Then the card could have been complete without any reference to the death of Barney Thlocco?

A. It could not in my judgment have been complete. Suppose it would be possible.

Q. Well it is now complete without reference to that isn't it?

A. Well, that is a matter of opinion.

Q. Is it now complete and as it was on May 24, 1901?

A. I expect it is, yes, sir."

I undoubtedly satisfied myself from an examination of that card whether Thlocco was living on April 1, 1899, and on May 24, 1901. I could not do that so far as the letters and figures on the card are concerned, but the fact that there was a card would satisfy me. There were thousands enrolled the same as those on this card. The Commission had every record available to go by for the separation of the lists in sending them to the Secretary. I have no recollection what we had in this case except this card.

On further cross examination said witness testified substantially as follows:

We had field parties out all the time and they were instructed to report on these facts from time to time as to when men died and all about it. We spent thousand- and thousand- of dollars getting that information. We kept no record of testimony, only when there was supposed to be a contest or likely to be, outside of that on the cards. We acted on the best information we could get.

"Q. Sometimes it was hear-say, sometimes direct, sometimes from the town king, sometimes from inhabitants near the party sometimes report made by your field men? You took the best information you could get?

A. We had the assistance of the best men in the tribe as well as our own field parties."

On redirect examination said witness testified substantially as follows:

"Q. How would that information get to your Commission for consideration?

A. Why frequently we heard it ourselves. I heard a great deal of it.

Q. Suppose you didn't hear it?

A. Then we took the judgment of the clerks on the cards. Unless it was called to my attention or to the attention of some Commissioner.

Q. I believe you answered counsel that many thousands of dollars was spent by your Commission in sending parties out to obtain information?

A. Yes, sir.

Q. You, of course, could not carry their reports in your mind?

A. No, we did carry a good many of them.

102 Q. Why did you have to, Mr. Bixby; state whether or not it is true that you required all of those persons to submit to your Commission the written result of their investigation?

A. Frequently only a memorandum and frequently it was made by full-blood Indians who couldn't write English or couldn't take shorthand reports and we could get nothing from them but verbal reports.

Q. Evidence gathered in this manner how did that information get to the Commission?

A. Frequently it was reported to the clerks and frequently to the Commissioners.

Q. Verbally?

A. I took some of it myself.

Q. In the Barney Thlocco case did you take any?

A. I have no recollection about the Barney Thlocco case whatever I haven't the slightest recollection about it.

Q. Mr. Bixby, after this activity and expenditure on the part of the Commission, state whether or not the Commission itself and its employees would take written memorandums of information that they received so as to preserve it?

A. Sometimes, yes, sir, a great deal of it was taken that way."

I remember we had 2,000 pages in one case. Sometimes we didn't make any memorandum. At the start it wasn't thought necessary. I remember when we started the Creek enrollment that we started to take data on scratch blocks, that was when we first started in the Creek Nation down at the old court house in the fall of 1897 and winter of 1898, I think it was, I don't remember just the date and we found that that was undesirable data to take for enrollment—"as a matter of fact you know no Indian had ever been enrolled like they were here. They generally herded them up in the wild tribe and just checked off a roll. Mr. Hopkins devised the card which we used now afterwards as that was about all we used in the Creek Nation."

took some testimony in the Creek Nation. It was taken on various questions, to identify the people and find whether they were entitled to enrollment and whether they were living or dead on certain dates.

Referring again to the Barney Thlocco card, I could not state to say whether or not he is living today or dead if I didn't give consideration to the notation made on the card in 1906.

On examination by the court said witness testified substantially as follows:

I think I examined every card in the Creek Nation myself personally, every one probably more than once. That examination took place in the office at Muskogee after the card was made. The practice with regard to that examination was to read the card and check it with the roll (tribal roll) or any other information that there might be, or if anybody had presented any suggestions either verbally or in writing, they were taken into consideration and examined and probably field parties were sent out. We made a list of names that were questioned and sent field parties out for them to see whether they were living or dead. Sometimes there was a question as to whether — weren't too many children on a card. The Creek families would get mixed up about the children sometimes—various matters would come up which required investigation which was conducted from time to time. In the Creek Nation I believe I examined every card personally, of course, not always in detail, because there were too many of them to do that.

On further redirect examination said witness testified substantially as follows:

There were somewhere around 18,000 Greeks enrolled. In all the five tribes there was something over 102,000. The enrollment of the Greeks covered a period of about 8 years, or 9 years may be, and the other tribes covered the same period. We were enrolling the other tribes at the same time we were enrolling the Greeks, but we got the Greeks pretty well along before we started the others. The major part of the Greeks were enrolled during a period of something like 2, 3 or 4 years.

On further cross examination said witness testified substantially as follows:

As a matter of fact when I would take this card I would have the card and the clerk would have the schedule. When I took the card I went over it several times with the clerks and would find from the clerk all the information that he had with reference to that card several times. I expect I have talked with the clerks about every card more than once.

Witness excused.

By Mr. Linebaugh: If the court please I now offer in evidence a certified copy of certain testimony taken by the Commission

to the Five Civilized Tribes October 16, 1903, in the matter of an accounting for those persons whose names appear on the Creek Tribal rolls who died prior to April 1, 1899, and are not shown on said rolls to be otherwise accounted for, and particularly that portion of that testimony being the testimony of one John A. Jacobs, to-wit, on October 16, 1903, with reference to Barney Thlocco.

104 By Mr. Stuart: We object to that your honor, that was taken after the certificate of allotment had been made and what relevancy can it have now? Purely ex parte without notice.

By the Court: What is the date of that?

By Mr. Davidson: October 16, 1903.

By the Court: The date of the allotment in this case was 1902.

By Mr. Davidson: Yes, sir.

By the Court: The date of the recordation of patent was what?

By Mr. Davidson: March, 1903. Approved in April, 1903, and recorded afterwards.

By Mr. German: Let us have it identified your honor as Government Exhibit Ten.

By the Court: Let me examine it.

By Mr. German: We don't offer it for the purpose of showing anything other than this your honor, that they were investigating a thing which they had not investigated before. We will put a witness on the stand to prove that this is the only record there showing any information which they received, any evidence which they received on that question—any inquiry they made. Now they made it after they had enrolled him. Therefore, it is a circumstance showing that they had done the thing that they should have done before the enrollment. Why were they now doing it? I think it is competent as a circumstance.

By the Court: I will let you offer the witness to whom you refer and see whether that changes the situation in any way. The ruling on this will be reserved for the present and if you desire you may put on the witness to whom you refer and I will see whether or not his testimony in the first place is competent and if it is whether it makes any difference in the situation."

Whereupon CHARLES H. DREW was called and sworn as a witness on behalf of the complainant and testified on direct examination substantially as follows:

My name is Charles H. Drew. I am clerk in charge of the enrollment records of the Superintendent for the Five Civilized Tribes. I have searched the records in the office of the Commission with a view of finding all papers and records pertaining to the enrollment of Barney Thlocco up to date of the approval of his enrollment

in March, 1902. There is one census card which we call

105 the old census card and the census card which we use now

and the approved roll and the two tribal rolls, the 1890 and 1895. I have been unable to find any other documents or papers

there up to the approval of the enrollment. Subsequent to the

date of the approval of the enrollment in March, 1902, and prior

to the date of the investigation made on the reopening of the case in 1904, I find the testimony given by the town king in 1903, if I am not mistaken as to the date. This (referring to Government's Exhibit No. 10) is a copy of it.

By Mr. German: Now your honor we renew our offer of this exhibit No. 10.

By the Court: I admit it.

By Mr. Stone: Note our exception.

By the Court: Merely as a circumstance bearing on the record for the court to consider in connection with all the other evidence for whatever it may be worth, if anything. Exception noted.

Government's Exhibit No. 10 is in words and figures as follows:

Gov. Ex. 10.

5/7/15—Eq., 2017.

Department of the Interior, Commission to the Five Civilized Tribes.

OKMULGEE, I. T., October 16th, 1903.

In the Matter of the Accounting for Those Persons Whose Names Appear on the Creek Tribal Rolls Who Died Prior to April 1st, 1899, and are not Shown on said Rolls to be Otherwise Accounted for.

JOHN A. JACOBS, being first duly sworn by R. R. Cravens, notary public, testified as follows:

By the Commission:

Q. What is your name?

A. John A. Jacobs.

Q. What is -our postoffice address?

A. Holdenville.

Q. What is your age?

A. 32.

Q. Are you Town King of Tuckabatchee Town?

A. Yes, sir.

The object of this examination is to ascertain who of those persons whose names appear on the Creek Tribal rolls of Tuckabatchee Town died prior to the opening of the Creek Land Office. (April 1st, 1899.)

106 1890 Roll.

Q. Lucy Marks—page 227?

A. She died before the land office opened. Lightening killed her.

Q. Samochee—page 227?

A. If it is the one I am thinking of—I am not sure that his name

is Semochee. He is Joe Simmon's son and a half brother of Full Jimboy.

Q. Leho Marty—page 227?

A. He died before the land office opened.

Q. Sarnortken—page 227?

A. I am satisfied she died after the land office opened.

Q. Elumme—page 227?

A. He is dead, but I don't know whether he died before or *after* the land office opened.

Q. Sindy Noon—page 227?

A. She died before the land office opened.

Q. George Kernal—page 227?

A. He died before the land office opened.

Q. Arluck Hopie—page 227?

A. He has filed. His name is probable Aharluck Hopiye.

Q. Salley—page 227?

A. Probably they live near Eufaula, but I have not been able to find her.

Q. Nancy: Willie: Kizey—page 227?

A. I think they belong to the Snake faction. I have never been able to find them.

Q. Micco Chupko—page 228?

A. He is dead, but I don't know when he died.

Q. Richard Bruner—page 228?

A. He died before the land office opened.

Q. Robert McGirtt—page 229?

A. He died before the land office was opened.

Q. Lizzie Robison—page 229?

A. She died before the land office opened.

Q. Kanip Fixico—page 229?

A. Died before land office opened.

Q. Louis Larney—page 229?

A. Died before land office opened.

Q. Lizzie—page 229?

A. She died after the land office opened.

Q. John Nochee—page 230?

A. He died before the land office opened.

Q. Efer Yaholar—page 230?

A. He died before the land office was opened.

Q. Chuckchort Fixico—page 230?

A. He died before too.

Q. Leaner Bruner—page 230?

A. She died before the land office opened.

Q. Yarholochee—page 231?

A. He died before the land office opened.

107 Q. Long George—page 231?

A. He died before the land office opened.

Q. Maxey—page 231?

A. He died before the land office opened.

Q. Lucy Bear—page 231?

A. She died before the land office was opened.

- Q. Tulwer Fixico—page 232?
 A. He died before.
 Q. Sparnemarhar—page 233?
 A. He died before the land office opened.
 Q. John Leacher—page 233?
 A. I was told by John Francis that he say John Leacher in Muskogee after the land office was opened, requesting people not to file on land; that it was a mistake for the Creek people to take allotments. He was an old man.

- Q. Tuckabatchee Harjo—page 237?
 A. He died long before the land office opened.
 Q. Parney Thlocco—page 237?
 A. He died during that smallpox up near the Sac & Fox Agency.
 Q. Do you know whether he died before that hospital burned or not?
 A. No, sir. The one that died was Barney Thlocco, but I guess they got it Parney.
 Q. Wm. H. Walker; Susan N. M. Walker; Clisyann Walker—page 239?
 A. They lived in the Choctaw Nation.
 Q. Are they part Choctaw?
 A. I don't know, but I was told since that they were enrolled in the Choctaw Nation.

1895 Roll.

- Q. E. V. Burton?
 A. I think she was either a Choctaw or a white woman.
 Q. J. H. Crabtree?
 A. He is dead, but I don't know whether he died before the land office opened or not.
 Q. David Kernels?
 A. He is dead, but I don't know whether he died before the land office opened or not.
 Q. Tuckabatchee Harjo?
 A. He died before the land office opened.
 Q. James Sullivan?
 A. He died before the land office opened.
 Q. Lizze J. Robison?
 A. She died before the land office opened.
 Q. Chular Harjo?
 A. He died before the land office opened.
 Q. Lizzie and Liza Harjo?
 A. They both died after the land office opened.
 Q. Burney Marha?
 A. He died before the land office opened.
 Q. Louis Larnev?
 A. I think he died before the land office opened.
 Q. Rhoda Lena (Rhoda Lena)?
 A. I think she died before the land office opened.
 Q. Yarholoche?
 A. He died before the land office opened.

- Q. Lena Bruner?
 A. Died before the land office opened.
 Q. John Oche?
 A. He died before the land office opened.
 Q. Maxey?
 A. He died before the land office opened.
 Q. Mieco Chupko?
 A. Died before the land office opened.
 Q. Lucy Tiger; Susie Tiger?
 A. They died before the land office opened.
 Q. Long George?
 A. He died before the land office opened.

1895 Omitted Roll.

- Q. Nathan Jacobs—Creek Card No. 3331?
 A. I think that was enrolled on the omitted payment as my boy, but in the meantime my boy was placed on Little River Tulsa.
 Q. Was that your boy's name?
 A. No, sir, Frankie, but he did not have any name then. But I think Alexander, Town King of Tuckabatchee Town enrolled his boy as Nathan Jacobs. I don't think there is any such person. Frank is on Little River Tulsa. He drew money there. If I am mistaken they have it Babe on the 1895 roll, and in lead pencil.

The undersigned, being sworn, states that as stenographer to the Commission to the Five Civilized Tribes he recorded in full the testimony in the above and foregoing matter, and that the above and foregoing is a true and complete transcript of his stenographic notes thereof.

R. R. CRAVENS

Subscribed and sworn to before me this the 23rd day of October, A. D. 1903, at Muskogee, Indian Territory.

[SEAL.]

EDWARD MERRICK,
Notary Public

Department of the Interior.

Office of Superintendent for the Five Civilized Tribes.

MUSKOGEE, OKLAHOMA, — — —

This is to certify that I am the officer having custody of the records pertaining to the enrollment of the members of the Choctaw, Chickasaw, Cherokee, Creek and Seminole Tribes of Indians, and the disposition of the land of said tribes, and that the above and foregoing is a true and correct copy of carbon copy of testimony taken at Okmulgee, Indian Territory, on October 16, 1903, in the matter of account for those persons whose names appear on the Creek Tribal rolls, v-

died prior to April 1, 1899, and are not shown on said rolls to be otherwise accounted for.

109 GABE E. PARKER,
Superintendent for the Five Civilized Tribes.

May 7, 1915.

C. H. D.

Cross-examination of the witness Chas. H. Drew by Mr. Stuart:

"Q. You say there was no other record? Didn't you find that letter down there (referring to defendant's exhibit No. 3)?

By Mr. German: This was before the enrollment judge.

By the Court: Let him answer whether he found that letter. I will pass upon the admissibility later.

Q. You found that letter on the record didn't you?

A. Yes, sir, I did.

Q. And you know the contents of it?

A. I do."

By Mr. Stuart: Now your Honor, I want this letter—this letter certainly now is competent as an exhibit.

By Mr. German: We object to it on the ground that it is incompetent, irrelevant and immaterial. I don't appreciate the purpose for which it is offered nor its object. It is not in connection with the cross examination of this witness and counsel are not now proving their case.

By Mr. Stuart: Your honor here is why I offer it as an exhibit to our cross examination. This witness has testified that he found no other records of any kind. He started with the old census card and come down to this document that you read in evidence. It is admissible in evidence to rebut whatever force the record now offered in evidence as to the reopening of this case and as to whether or not it was originally examined.

By Mr. German: Then if it is offered for that purpose your honor, it is not the time to offer it.

By the Court: I think it is competent cross examination here. It will be admitted, exception noted."

Said letter is Defendants' Exhibit No. 3, and is set forth in full hereinbefore.

On further direct examination the said witness testified substantially as follows:

That letter as offered shows on its fact that there are a large number of names left off of it. I should think there were probably 2,000 names left off.

By Mr. Stuart: I will state, your honor, that we just put the name of Thlocco just to show that he was included.

110 By the Court: I understand Thloocco's name is included in this letter which you offer. I so understood.

By Mr. Stuart: Yes, sir, but the other names are not there because it would take a letter as long as this room.

Witness excused.

And thereupon HECKTOR BEAVER was recalled as a witness on behalf of the complainant and testified on direct examination substantially as follows:

I am the same witness who was on the stand day before yesterday, or yesterday. I live a little north of Bristow. I have lived in the Hilliby Settlement. I knew Barney Thlocco for about ten years of his lifetime. He is dead. He lived in the Hilliby Settlement. That settlement is southeast of the town of Stroud.

"Q. Mr. Beaver, how far was your house from where Thlocco——"

By Mr. Stuart: Your honor, we object to this testimony.

By the Court: Yes, it opens the question now as to whether or not the evidence so far offered amounts to a *prima faciae* case that this allotment or enrollment was made without evidence:

By Mr. Stuart: Yes, sir. We object to it because that *prima faciae* case is not made under the evidence and we are ready to be heard on it if your honor desires it.

By the Court: Well, that is a consideration of the testimony offered in this case.

And thereupon an adjournment was taken until tomorrow morning at 9:30 o'clock.

And thereafter court reconvened at 9:30 o'clock A. M. April 8, 1915, and the following proceedings were had.

Whereupon argument was heard by the court.

By the Court: Gentlemen, I don't think I care to take up further time with this matter. It has been gone over thoroughly. I have considered every phase of it. In my judgment if the contention of the Government is sound it means that these thousands of allotments and patents which have been issued here upon the faith of the enrollment of the Commission to the Five Civilized Tribes of these

111 Indians, can now be attacked and set aside by actions of this court, merely upon a showing that the Commission although finding, for instance in the case of the Creek Nation, that the allottee was living April 1, 1899, made a mistake and that inasmuch as they made that mistake it developed upon this court to re-try that issue. I may be wrong but as I view the law that would be a holding contrary to the law, contrary to public policy and a holding which I cannot make in this case.

By Mr. Linebaugh: May I make another suggestion?

By the Court: I think the matter has been argued. Take your exceptions. I am so clear on that proposition that I am willing to stand on it until the Circuit Court of Appeals says otherwise.

By Mr. Davidson: This is a ruling now on the offer we made yesterday?

By Mr. Linebaugh: I understand the court is not making of record any ruling at this time.

By the Court: I am going to announce my view of what the Government has sought to establish by the evidence offered in support of its contention that the Commission acted without evidence in enrolling Barney Thlocco. Last night or yesterday evening when the court adjourned the evidence of the Government had just closed in relation to that allegation of the Government's bill that the enrollment of Barney Thlocco had been made by the Commission to the Five Tribes without any evidence whatever relating to the fact as to whether he was alive or dead April 1, 1899. The court held in a prior stage of the case that it would be necessary, first, in order of proof, for the Government to support that allegation by proof sufficient to make a *prima faciae* case. Since the adjournment yesterday evening I have reviewed the evidence in this case, so far as it relates to that feature of the case. The question is: Has the Government made a *prima faciae* case on that point? That is, has it by clear and convincing proof shown to the court that the Commission acted in enrolling Thlocco without any evidence whatever. If the proof, on the other hand, clearly convinces the court that it did have evidence, or if the proof is such as to leave the court's mind in a state of doubt as to whether there was evidence or not, in my judgment the Government has failed to establish that *prima faciae* case. I have examined, as I say, the evidence of all these witnesses, Mr. Merrick, Mr. Hastain, Mr. Hopkins, Mr. Bixby and Mr. Lieber in particular. Mr. Merrick's testimony in view of the fact that he himself made the card, probably affords the court the most direct light upon the controversy. A very significant feature of the case as developed by Mr. Merrick's testimony and as developed by a

112 comparison of the census card as made by him on May 24,

1901, with the old census card is this: That whereas the evidence differs that in other instances, a greater or less number of instances, the census cards which were made on that date and on the prior days in May were made from the tribal rolls and the census card, in this case it clearly develops that the census card which Mr. Merrick made must have been made on evidence outside of and in addition to the rolls and the old census card, for the reason that the age of Barney Thlocco and his post-office address is given as different from that which appeared on the census card. It follows, therefore, that as to those particular statements there must have been before Mr. Merrick evidence in addition to that contained in the documents to which I have referred. It doesn't follow as a matter of positive conclusion that that evidence affected the question as to whether Barney Thlocco was living or dead April 1, 1899, but it does show that Mr. Merrick in the case of that card didn't just follow the rolls and the old census card and take no further evidence whatever. There must have been before Mr. Merrick some investigation outside of those documentary features. The evidence is clear here that at the time these cards were made up, Barney Thlocco's as well as the others, the Commission with its large force was there securing as far as it could evidence sufficient to enable it to complete these census

cards which were to become the basis of the schedules which would finally be forwarded to the Secretary for his approval and make up the roll. There was the tribal council in session, the Town Kings were there. The evidence clearly shows that they had access to the Town Kings, that they had parties out bringing in evidence. That the evidence in enrolling the Creeks was largely, almost entirely, except in contest cases, oral and not made a matter of record, so that unfortunately we have not now here any record to show what was before the Commission, but in view of that and in view of the evidence here the court can't say as a fact—can't find as a fact that there was no evidence before the Commission on that day or that there was no evidence at some subsequent time pursuant to investigation which the Commission made, and made before the schedule was made up and forwarded to the Secretary, can't find as a fact from the evidence in this case in my judgment that there was no such evidence. There has been offered in evidence here and permitted to become a part of the record the proceedings of October 16, 1903, which appears to have been in the course of an examination with regard to certain unaccounted for Creeks, a great number of them. It appears that when the Town King was being examined that he was questioned with regard to Barney Thlocco's name on the roll and

113 he speaks of him as Barney Thlocco on the 1890 roll. As Barney on the 1895 roll. He is asked with regard to his death in relation to the burning of a certain hospital or house of some character. There is evidence that that is a circumstance to show that that was the investigation, and the only investigation which the Commission ever made with regard to the question of Barney Thlocco's existence on April 1, 1899. That was permitted as a circumstance, but when considered in connection with the evidence of Mr. Merrick, Mr. Hastian, Mr. Bixby and Mr. Hopkins with regard to the manner in which this enrollment was handled, the statement of these gentlemen, offered by the Government, their positive statements that there must have been evidence with regard to Barney Thlocco's existence April 1, 1899, or his name would not have been forwarded for enrollment; in view of those statements the court cannot find that this evidence clearly and convincingly establishes the fact that there was no evidence prior to the time the schedule was forwarded. If that is true as I view the province of this Commission, it was made an agency of the Government to determine the question of Barney Thlocco's right to enrollment, and when that question was determined and the questions of fact determined by that Commission necessary to establish his right to enrollment, those questions of fact when the enrollment is approved by the Secretary of the Interior stand as determined for all time, in all courts until they are attacked because of having been based upon fraudulent testimony or having been arbitrarily found without any testimony. I may be wrong. I have heard arguments for two days in this matter. Of necessity counsel on the contending side disagree, but that is my judgment in the matter, and in view of the prior holding of the court and in view of the conclusion which I reach from this evidence, in my judgment, the Government has failed to establish the *prima faciae* case with

regard to the lack of evidence as to the existence of Barney Thlocco April 1, 1899, and, therefore, is not permitted to now inquire into the fact as to whether or not he was in fact living. That is the view I take of this case, gentlemen. I had just as well announce it now.

By Mr. Davidson: So that the objection to the last question propounded will be sustained.

By the Court: The last question probably was in relation to that feature whether he was living or dead if it is, it would be sustained; your record may be made upon those objections.

By Mr. Davidson: Exception.

By the Court: Exception noted.

114 By Mr. Linebaugh: We may complete our record by making such offers, I presume.

By the Court: Yes.

By Mr. German: We offer to prove by this witness Hector Beaver and by other witnesses in attendance upon the court, to-wit: Figey Blueford, Ben Combest, Jim Combest, A. B. Comer, W. A. Christie, Martin Daugherty, Dan Dirt, J. J. Evans, Ben Hoter, Billie Johnson.

By Mr. Stone: Your honor we object to reading the names of a cloud of witnesses into the record.

By the Court: Objection overruled. The offer will be received.

By Mr. German: Dave Knight, Party, Lee Patrick, August Polk, Alonzo Polk, John Summers—

By the Court: Now Mr. German probably the record might be shortened there if you desire to state the number of witnesses.

By Mr. German: I only have three more, your honor.

By the Court: All right, then you may name them.

By Mr. German: Charlie Swift, Milannie, Thomas Vanderslice, Pete Washington, and others whom we have produced, and by records and documentary evidence, the following facts: That Barney Thlocco in whose name the patent was made in this case died on or about the 10th day of January, 1899, at the age of from forty-five to fifty years and prior to the 26th day of January, 1899; that Barney Thlocco was a resident of the Creek Indian settlement known as Hilliby where he had resided a number of years prior to his death; that said settlement is situated in what is known as Tuckabachie Town of the Creek Tribe of Indians and of which Barney Thlocco was a member. That during the winter of 1898 and 1899 the small-pox broke out in the Hilliby Settlement, which disease at that time was supposed and believed by the Indians to be black measles and was so believed by them to be black measles until the 26th day of January, 1899. That on the 26th day of January, 1899, Lee Patrick, the then Indian Agent of the Sac and Fox Agency near the Hilliby Settlement was directed by the Secretary of the Interior to take steps to eradicate this disease among the Indians; that Mr. Patrick made inquiry and found the disease to be small-pox and established a pest camp in the settlement to which all the Indians affected with small-pox were removed; that the establishment of this pest camp was on the 26th day of January, 1899; that this pest camp was maintained until the eradication of the disease among the Indians

in the spring of 1899; that Barney Thlocco died about two weeks before the establishment of this pest camp; that he was either the first or second Indian to die of this disease; that the first Indian to become afflicted therewith was Figey Blueford, that Barney Thlocco was a prominent Indian, and that *is* was widely generally and well known among all the inhabitants of this community that he died before the establishment of the pest camp on the date aforesaid; that a large number, approximately seventy-five of the Indians in the community died of the disease during the prevalence of this epidemic; that the official record of the small-pox camp kept by the Indian Agent Patrick will and does show that only one of such Indians died after April 1, 1899; that the name of this Indian who died after April 1, 1899, was Osar-heneka; that the Indian Agent Patrick, who was then the Indian Agent at the Sac and Fox Agency, was an employee and representative of the Department of the Interior of the United States. That the following named Indians, to-wit: Tuskegee Harjo, Arch Johnson, Jimmie Deer, and Sam Laslie attended the burial of Barney Thlocco, one of them having made his coffin and others of them having dug his grave, and buried him; and that these same persons afterwards were taken with the small-pox and removed to the camp and that all of them except Tuskegee Harjo died during the month of February, 1899, and that Tuskegee Harjo died January 27th, 1899; that all of the members of the Barney Thlocco family consisting of himself and three children died about that time except Thlocco himself in the pest camp established in Hilliby shortly after the establishment thereof and during the month of February, 1899, Thlocco himself having died at the time as aforesaid. That Barney Thlocco's only living brother died during this time about the month of February, 1899, after having been present at the death of Barney Thlocco and at the burial of Barney Thlocco. That this was the only small-pox epidemic that ever occurred in the Hilliby Settlement and that the epidemic left very few survivors in the settlement.

By Mr. Stone: We interpose an objection to that testimony, your honor, for the reasons assigned.

By Mr. Davidson: If the court please, I understand there is no objection to the fact that we haven't put the witnesses on the stand.

By the Court: No, I don't understand that. (Indicating that the court does not understand that there is objection because the witnesses have not been put on the stand.) Rule 46 provides: (Reads) Pursuant to that rule I think the offer made by counsel is properly read into the record. It shows the appellate court what the Government offers to prove.

116 By Mr. Shea: The defendants object to the introduction of this testimony for the reason that the Government has failed to establish its allegation that the finding of the Dawes Commission was not based upon evidence.

By the Court: That objection will be sustained and the exception of the Government noted.

By Mr. German: Yes, your honor, we except.

By Mr. Davidson: The Government now offers the following statement and admission made by the Black Panther Oil and Gas Company in its separate answer to the amended bill of complaint filed October 28th, 1914, to-wit, the following statement in the said answer.

By Mr. Shea: We object to that at this time.

By the Court: Well it is offered, I will have to hear the offer, I will hear you- offer and rule upon it.

By Mr. German: "This defendant admits that there was no controversy or contest of any kind put on before said Commission with respect to the enrollment of said Barney Thlocco or his right to be so enrolled and in this connection this defendant avers that there was no ground for any controversy or contesting the right of said Barney Thlocco to receive an allotment, his enrollment not having been challenged in any manner."

By Mr. Shea: Objected to as immaterial and for the same reason that the objection was made to the other testimony, and further that any allegations by the Black Panther Oil and Gas Company couldn't be binding upon the heirs of Barney Thlocco who are the holders of the allotment.

By the Court: Objection sustained. Exceptions noted.

By Mr. Davidson: We offer now to prove that there was no instrument filed in Creek County where the land is situated in any manner affecting the title to the land until the year 1913.

By Mr. Stone: May I inquire for what purpose that is offered?

By Mr. Davidson: Simply to support our theory that this land was never claimed by anybody at the time the Secretary cancelled this allotment.

By Mr. Stone: We object to that, your honor.

By the Court: Objection sustained. Exception noted.

By Mr. Davidson: Now we offer to prove that a suit was instituted by the United States Government against the unknown heirs of Barney Thlocco, being Equity 1543, on February 17, 1911; that 117 a decree cancelling the patent previously entered on July 29, 1911, cancelling the certificate and patent issued to Barney Thlocco.

That said cause was re-opened upon the application of certain persons claiming to be the heirs of Barney Thlocco and that said cause was re-opened July 13, 1913. That said cause was dismissed by the court upon motion of the Government on November 1, 1913.

By the Court: When the cause was re-opened I take it that the court set aside the former decree and left it standing as a cause for trial isn't that true, that must have been a part of the order.

By Mr. Stone: I suggest that counsel let the offer show that the bill was then dismissed after the decree was set aside that the bill was set aside on motion of the Government.

By Mr. German: On the same day that this suit was filed now on trial.

By the Court: Now I am sure you gentlemen will have no trouble in agreeing upon this statement which is merely a record statement. It is clear that the case was re-opened upon application, as counsel

for the Government has suggested in his offer, of certain parties claiming to be heirs; that the court when the cause was reopened by its order set aside the decree theretofore entered cancelling the certificate and patent. That is true, isn't it? And that subsequent to that time the cause was by the Government dismissed and on the same day this cause was filed.

By Mr. German: Yes, sir.

By Mr. Stone: That is true, your honor.

By the Court: You agree, gentlemen, that that is the record in brief as to this case?

By Mr. Stone: Agreeing that that is the record we object to its introduction at this time.

By the Court: Well they haven't completed their offer at this time.

By Mr. Linebaugh: May I complete it by this suggestion?

By the Court: Yes, sir.

By Mr. Linebaugh: We offer to prove further that the decree rendered by the court in 1911 was based upon service had by the Government by publication addressed only to the unknown heir of Barney Thlocco, and that simultaneous with the entering of the order of dismissal and upon the same day this suit now on trial was filed.

118 By Mr. Stone: We understand that is correct, your honor.
By the Court: Does that complete your offer on this phase
of the case?

By Mr. Davidson: Yes, sir.

By Mr. Stone: We object to that because the judgment was void, had been vacated and has no part in this case.

By the Court: Objection sustained.

By Mr. German: We except.

By the Court: Exception noted. Does that complete your offer, gentlemen?

By Mr. German: One moment, your honor, and that will involve putting Judge Angell on the stand. We can make the offer, your honor, without Judge Angell.

By the Court: All right.

By Mr. Davidson: We offer now to prove by W. H. Angell who has charge and custody of the record of the enrollment of the Creek Indians, records of the Superintendent to the Five Civilized Tribes, that on July 30, 1913, there appeared before the Commissioner to the Five Civilized Tribes, M. L. Mott, National Attorney for the Creek Nation, and D. H. Bynum, representing the Creek Nation, and also J. Coody Johnson of Wewoka, Oklahoma, and George M. Swift of Wewoka, representing the heirs of Barney Thlocco, deceased, representing the alleged heirs of Barney Thlocco, deceased, at which time and place proceedings were had and testimony taken to obtain a restoration of the name of Barney Thlocco to the rolls of Creek Indians from which his name had been stricken on December 13, 1906, by the Secretary of the Interior, at which time the testimony of a number of witnesses was taken by the Commission in relation to said application.

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Mr. Stone: Now to make the record clear, Mr. Davidson, will tell what heirs of Barney Thlocco or claimants to the estate of Thlocco were there personally or by representatives. It is my contention that none of our clients were there and that they nothing of this proceeding.

Mr. Davidson: We offer to show by the records made by the Commissioner at that time that J. Coody Johnson and George M. were recorded as present representing the heirs of Barney Johnson, deceased. That is what the record shows.

The Court: Does the record show the individual heirs represented?

Mr. Davidson: It does not. Representing heir, it doesn't show which heir or who.

By the Court: Well the offer is made, gentlemen.

By Mr. Shea: Objected to for the same reason given before the trial and having no bearing on this case, the Government having failed to establish the enrollment question.

The Court: Objection sustained. Exception noted.

Mr. Davidson: We can state the purpose of this offer.

The Court: I don't think, gentlemen, in the view that I have of this case it is competent in this case.

Mr. Davidson: Then as I understand it counsel don't require to state the purpose of our offer.

The Court: The offer is made, counsel have not requested the cause for which it is offered.

Mr. German: Now your Honor, we offer to introduce the whole of Exhibit No. 1 and make a part of the record the notation appearing on Exhibit No. 1, which is the new census card, pertaining to the cancellation of the enrollment, and to prove that that entry was made on before March 4, 1907, and immediately after receipt of the Secretary's letter directing the cancellation, which has already been read and excluded.

Mr. Shea: Objected to for the same reason as heretofore given.

The Court: Objection sustained. Exception noted.

Mr. German: We offer to introduce the whole of Exhibit No. 1, which is a certified copy of the roll in so far as the same shows the name of Barney Thlocco, and to show that the notation appearing on the same, "Stricken by order of the Department, December 13, 1906," was made on the official roll pursuant to the letter of the Department dated December 13, 1906, and immediately after the receipt of said letter by the Commission, and prior to the 4th day of March, 1907.

Mr. Shea: Same objection.

The Court: Objection sustained. Exception noted.

Mr. German: We rest, your honor.

Mr. Stone: May it please the court on behalf of all the defendants and intervenors who appeared in objection to the Government, to ask for the dismissal of the Government's bill and a decree in favor of said defendants and intervenors. For the reason that the Government has not made out a case, has not sustained the allegation of its case by the evidence.

By the Court: The decree may enter in favor of the defendants dismissing the bill. Exceptions may be noted.

120 By Mr. Linebaugh: If the court please, all of the counsel being present representing the defendants who have joined issue with the general answer we desire at this time to give notice to counsel that the Government will appeal from the decree when entered.

By the Court: The record may show notice of appeal given by counsel for the Government in open court at the conclusion of the trial in the presence of counsel for the defendants.

(The End.)

In the United States Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT et al., Appellees.

Approval of Statement.

Now on this the 30th day of October, 1915, the above entitled and numbered cause came on to be heard upon the application of the appellant, the United States of America, for the approval of its statement of the evidence and proceedings had and conducted at the trial of this action, and it appearing to the court that this statement was lodged with the clerk of this court on the 14th day of October, 1915, and that notice in writing of said lodgment was given to the respective solicitors of the respective appellees, and that this court, or the judge thereof, would be asked to approve said statement on this date at the United States Court Room at Muskogee, in said Eastern District of Oklahoma, and that said notices were served more than ten days prior to this date, and the court having examined said statement finds that the same is true, complete and properly prepared, and there being no objection made thereto, or amendment thereto proposed by any party; and it appearing to the court that the appellant desires certain of the testimony of certain of the witnesses reproduced in the exact words of the witnesses as is shown in the said statement, it is, by the court, directed that said testimony shall be reproduced;

It is, therefore, considered and ordered that said statement, which is hereto attached, be and the same is hereby approved.

RALPH E. CAMPBELL, Judge.

Endorsed: Filed Oct. 30, 1915. R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

121 And, to-wit, on the 8th day of May, A. D. 1915, the following proceedings were had in this cause. Honorable Ralph E. Campbell, Judge presiding.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017. Equity.

UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT et al., Defendants.

Decree.

On this the 8th day of May, 1915, at this term, this cause came on further to be heard, and the evidence having been heard, the case having been argued by counsel, thereupon, upon consideration thereof, the court finds the issues against the complainant and in favor of the defendants and interveners who answered to the complainant's bill of complaint as amended.

It is therefore, ordered, adjudged and decreed that the complainant's bill of complaint as amended be, and the same is hereby, dismissed with prejudice against another action upon the same ground, all of which the complainant excepts and its exception is allowed, and in open court, and in the presence of counsel of record for the defendants and interveners, the complainant gives notice of appeal.

RALPH E. CAMPBELL, Judge.

And, to-wit, on the 7th day of September, A. D. 1915, the following proceedings were had in this cause. Honorable Ralph E. Campbell, Judge presiding.

In the District Court of the United States for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT et al., Defendants.

Order Allowing Intervention of J. W. McNeal and L. W. Baxter.

Now on this 7th day of September, 1915, on hearing the motion of J. W. McNeal and L. W. Baxter heretofore filed herein for leave to be made parties to this cause and to file intervening petition herein, the court, being advised in the premises, finds that the prayer of said motion should be granted, on condition, however, that said intervening petitioners accept all the terms of the decree entered in this cause,

after final hearing, on the 8th day of May, 1915, and agree to be bound and abide by any affirmation, modification or reversal of said decree as fully and completely and to the same effect as though they had been parties to this cause when said trial was had, and 122 had participated therein, to which condition said petitioners by their counsel in open court announce their consent.

It is, therefore, ordered that said motion for leave to file intervening petition herein be and it is hereby granted, and said intervening petition ordered filed, and said intervening petitioners made parties defendant in this action on condition, however, that said intervening petitioners accept all the terms of the decree entered in this cause on the 8th day of May, 1915, and shall be bound and abide by any affirmation, modification or reversal of said decree as fully and completely, and to the same effect, as though they had been parties to this cause when said trial was had and had participated therein.

RALPH E. CAMPELJ., Judge.

And, to-wit, on the 7th day of September, A. D. 1915, the following proceedings were had in this cause. Honorable Ralph E. Campbell, Judge presiding.

In the District Court of the United States for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT et al., Defendants.

Order Allowing Intervention of Dave Knight.

Now on this 7th day of September, 1915, on hearing the motion of Dave Knight heretofore filed herein for leave to be made a party to this cause and to file intervening petition herein, the court, being advised in the premises, finds that the prayer of said motion should be granted, on condition, however, that said intervening petitioner accepts all the terms of the decree entered in this cause, after final hearing, on the 8th day of May, 1915, and agrees to be bound and abide by any affirmation, modification or reversal of said decree as fully and completely and to the same effect as though he had been party to this cause when said trial was had, and had participated therein, to which condition said petitioner by his counsel in open court announce his consent.

It is, therefore, ordered that said motion for leave to file intervening petition herein be and it is hereby granted, and said intervening petitioner made party defendant in this action on condition, however, that said intervening petitioner accepts all the terms of the decree entered in this cause on the 8th day of May, 1915, and shall

bound and abide by any affirmation, modification or reversal of said decree as fully and completely, and to the same effect, as though he had been party to this cause when said trial was had and had participated therein.

RALPH E. CAMPBELL, Judge.

23 And, to-wit, on the 22nd day of September, A. D. 1915, the Complainant the United States of America filed Petition for Allowance of Appeal, together with Assignment of Errors, which appeal was allowed by the court. Said Petition for Allowance of Appeal, Order Allowing Appeal and Assignment of Errors are in words and figures as follows:

In the United States Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT, a Minor; SANTA WATSON, as Guardian of Bessie Wildcat, a Minor; Cinda Lowe, Louisa Fife, Annie Wildcat, Emma West, Martha Jackson, a Minor; Saber Jackson, as Guardian and Next Friend of Martha Jackson, a Minor; J. Coody Johnson, Aggie Marshall, Phillip Marshall, H. B. Beeler, Max H. Cohn, Black Panther Oil & Gas Co., a Corporation; Jack Gouge, Ernest Gouge, Mattie Burner, Formerly Mattie Phillips; Jennie Phillips, Billie Phillips, D. L. Berryhill, William McCombs, Barney Unussee, Barnossee Unussee, Johnathan R. Posey, Charles F. Bissett, Taxaway Oil Company, a Corporation; F. L. Moore, J. S. Cosden, Fulhogchee Barney, Siah Barney, Tommy Barney, Mollie Barney, Toney Chupko, Joseph Chupko, James C. Chupko, Eddie Larney, Polly Yargee, Sarkarye Chupko, Dick Larney, Moser Chupko, Tommy Chupko, Linda Hario, Mary Jones, Loley Cooper, Celia Yahola, Charles S. Smith, Nora Watson, a Minor; John Smith, Lewis Smith, Lawrence Smith, Guy Smith, Ella Looney, néé Smith; Edna Pike, néé Smith; Pearlie Smith, Willis Smith, a Minor; J. S. Tilly, Guardian of Willis Smith, a Minor; Rannie Smith, Elizabeth Rhyne, néé Smith; Rashie C. Smith, Montie Nunn, néé Smith; Lou Smith, Howard Weber, Saber Jackson, Martha Simmons, Hannah Bullette, Robert Owen Burton, Nathaniel Mack Burton, Lydia Belle Wilson, néé Burton; Samuel L. Burton, Abi L. Miller, néé Burton; Minnie Ola Edwards, néé Burton; Mary Eliza Burton, J. W. McNeal, L. W. Baxter, Dave Knight, Defendants.

Petition for Appeal.

To the Honorable Ralph E. Campbell, District Judge:

The above named complainant feeling itself aggrieved by the decree made and entered in this cause on the 8th day of May, 1915,

does hereby appeal from said decree to the Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and it prays that its appeal be allowed, and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

D. H. LINEBAUGH,

United States Attorney;

W. P. Z. GERMAN,

Special Assistant to the United States Attorney.

The foregoing petition is granted and the appeal is this day allowed in open court.

Done this the 22d day of September, 1915.

RALPH E. CAMPBELL, Judge.

Endorsed: Filed Sep. 22, 1915. R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

In the United States Court for the Eastern District of Oklahoma

THE UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT, a Minor, et al., Defendants.

Assignment of Errors.

Comes now the complainant by D. H. Linebaugh, United States Attorney for the Eastern District of Oklahoma, and W. P. Z. German, Special Assistant to said United States Attorney, its solicitors, record, and shows that the final decree entered in the above entitled cause on the 8th day of May, 1915, is erroneous and unjust to complainant, and complainant now files the following assignments of errors, upon which it will rely in its appeal from said judgment and decree for a reversal of the same, to-wit:

I.

The court erred in overruling the motion of complainant to strike the joint answer, filed herein by the defendants and interveners.

II.

The court erred in rejecting certain evidence offered by complainant, to-wit: that portion of complainant's exhibit number 2, in which figures as follows:

125 "Stricken by order of Department, Dec. 13, 1906 (I. T. 22734-1906), Commissioner's File No. 55241-1906."

III.

The court erred in sustaining the objection of the defendants and interveners to the question propounded by the solicitors for complainant to the witness J. E. Kirkbride, as follows: "Q. Were there any improvements on the land?"

IV.

The court erred in rejecting the following evidence of the witness J. E. Kirkbride, offered by the complainant:

That on the 3rd day of November, 1913, the lands in controversy were unoccupied, unimproved and had not been occupied by fencing nor houses, nor had they been tilled or in any other manner occupied, nor in the physical possession of any person.

V.

The court erred in sustaining the motion of the defendants and interveners to strike the following answer of the witness W. H. Angell given in response to questions propounded by the solicitor for complainant, and in excluding said evidence, to-wit: "A. Yes, sir, and in red stricken from approved roll December 13, 1906, Commission file No. 55241, 1906."

VI.

The court erred in rejecting certain evidence offered by complainant, as follows: Complainant's Exhibit No. 7 consisting in a certified copy of the records in the office of the Commission to the Five Civilized Tribes pertaining to the cancellation of the enrollment of the name Barney Thlocco as a Creek citizen by blood, the full substance of said records being as follows:

A letter dated August 25, 1904, written by the Chairman of the Commission to the Five Civilized Tribes to the Secretary of the Interior, advising that the attorney for the Creek Nation had moved that the right of Barney Thlocco to enrollment be re-opened, and transmitting the affidavits of Wilson Knight and Barney Yahola relative to the date of death of said Barney Thlocco, and recommending that said case be re-opened on the ground that said Barney Thlocco died prior to April 1, 1899, and that a re-hearing be ordered;

126 A letter dated September 7, 1904, from the Commissioner of Indian Affairs to the Secretary of the Interior enclosing a report from the Commission to the Five Civilized Tribes dated August 25, 1904, concerning the application of the attorney for the Creek Nation to have said case re-opened, and recommending that said motion be granted;

The joint affidavit made August 9, 1904, of Wilson Knight and Barney Yahola, stating that they personally knew Barney Thlocco and that he died prior to April 1, 1899;

A letter dated September 16, 1904, from the Secretary of the Interior to the Commission to the Five Civilized Tribes, granting the said motion to re-hear said case, and so advising said Commission:

The testimony of Jonas Bear taken by and before the Commission to the Five Civilized Tribes on October 21, 1905, wherein he testifies, among other things, that Barney Thlocco died in January or February, 1899, and prior to the date upon which the Creek Land Office was opened, to-wit: April 1, 1899; and,

The testimony of Charley Simmer taken by and before the Commission to the Five Civilized Tribes on November 14, 1905, wherein he testified, among other things, that Barney Thlocco died in December 1898 or January 1899, and prior to the date upon which the Creek Land Office was opened, to-wit: April 1, 1899; the testimony of both said witnesses having been taken in the matter of the enrollment of Barney Thlocco, deceased, as a citizen by blood of the Creek Nation;

A notice dated February 9, 1906, addressed "To the heirs of Barney Thlocco, Arbeka, Indian Territory," signed by the Acting Commissioner to the Five Civilized Tribes, notifying said heirs that on February 19, 1906, a hearing would be conducted in the matter of the right of enrollment of Barney Thlocco, deceased:

A letter dated October 10, 1906, addressed to the Secretary of the Interior by the Commissioner to the Five Civilized Tribes, setting forth the various proceedings beginning with August 25th, 1904, had in connection with the re-hearing of the right of Barney Thlocco to enrollment, and the various hearings conducted by the Commission, and the substance of the evidence received, and advising that it

was conclusively established that Barney Thlocco died prior
127 to April 1, 1899, and recommending that authority be granted
for striking his name from the approved roll of Creek citizens,
opposite roll No. 8592, and transmitting the entire record in said
matter: and,

A letter dated December 13, 1906, addressed to the Commissioner to the Five Civilized Tribes by the Secretary of the Interior, stating among other things, that the recommendation to strike the name of Barney Thlocco from the approved roll was concurred in by both said office and the office of the Commissioner of Indian Affairs, and advising that said name had been cancelled by the Department from said roll, and that the Indian Office had been directed to take similar action, and authorizing said Commissioner to the Five Civilized Tribes to cancel said name from the roll in his custody.

VII.

The court erred in sustaining the objection of the defendants and interveners to the following question propounded by the solicitor for the complainant to the witness Hecktor Beaver, to-wit:

"Q. What year did he die in?"

VIII.

The court erred in rejecting the following evidence of the witness Hecktor Beaver, offered by the complainant:

We offer to prove by this witness that he knew Barney Thlocco. knew him for a number of years before his death. That the witness lived about a mile and a quarter northwest of the home of Barney Thlocco at the time of a small-pox epidemic in the Hilliby Indian settlement in the year 1899; that the witness remembers and testify as to when Lee Patrick, the United States Indian Agent at the Sac and Fox Agency, which agency had its head-quarters at six or eight miles northwest of the location of the Hilliby settlement, established a pest camp at or near the home of this witness, when a quarantine against the small-pox was established around Hilliby Settlement. And that prior to this time, which was in latter part of January, 1899, Barney Thlocco died of small-pox. This witness we further offer to prove that he, the witness, visited home of Barney Thlocco the night before the death of Barney Thlocco and at this time Thlocco was sick with the disease which the Indians thought was black measles. That several other Indians in same locality were suffering from the same disease but neither the witness nor the Indians in the locality knew the affliction to be small-pox until the establishment of the pest camp by the Indian Agent in January, 1899. That the lumber used build the coffin for Barney Thlocco was taken from an old house belonging to the witness, and witness saw Barney Thlocco's grave in the Indian cemetery about 200 yards from the house of Barney Thlocco. That the witness saw Barney Thlocco's coffin on the porch of the house of Barney Thlocco. The witness will testify that the making of the coffin, and seeing of the same at the house of Barney Thlocco and observing the grave of Barney Thlocco was all before the establishment of the pest camp by Lee Patrick, the Indian Agent. Witness can and will further identify and fix the time by reason of the fact that several of the members of the witness' family died of this disease prior to the establishment of the pest camp and after the death of Barney Thlocco. That the witness will testify about the same the pest camp was established he visited the house of Barney Thlocco in company with one Jim Combest who was then engaged as a nurse for the Indian Agent in connection with the small-pox epidemic. That Combest took from this house on this occasion all the remaining members of the Thlocco family who were yet alive and all of them were suffering from small-pox, these people being taken to the pest camp. That at the time Thlocco was dead and buried. That about this time witness took Jim Combest to the home of Tuskegee Harjo who was suffering from the small-pox, and Combest took Tuskegee Harjo and the members of his family to the pest camp. Witness knows that Tuskegee Harjo attended the funeral of Barney Thlocco and that Tuskegee Harjo died on the same night of his removal to the pest camp."

IX.

The court erred in directing that the order of proof should be in a certain manner, which said direction is in words as follows, to-wit: "I hold that the order of proof in this case should first be with rela-

tion to the allegation as to the entire absence of evidence on the part of the Dawes Commission, before the Dawes Commission, as to Barney Thlocco being alive April 1, 1899?"—and again in the following language: "Well, I hold, gentlemen, that the order of proof in this case shall be first with relation to the question as to lack of evidence before the Dawes Commission."

X.

The court erred in overruling the objection of the complainant to the question propounded by counsel for the defendants and 129 interveners to the witness Edward Merrick:

"Q. Do you know, without referring to any particular fact, that you never included any man's name in the schedule without taking evidence, did you?"—and in admitting the answer of the witness thereto:

"A. That is a fact that we had information that we thought we could rely on that that person was living on April 1, 1899."

XI.

The court erred in overruling the objection of the complainant to the following question propounded by the solicitor for the defendants and interveners to the witness P. B. Hopkins, to-wit:

"Q. There were parties out after that time and ultimately before any of these tentative enrollments were sent to the Secretary, the Commission became satisfied, on evidence, that the names of the parties whose names were transmitted to the Secretary of the Interior for approval were entitled to enrollment?"—and in admitting the answer of the witness thereto:

"A. Yes, sir."

XII.

The court erred in overruling the objection of the complainant to the following question propounded by the solicitor for the defendants and interveners to the witness P. B. Hopkins, to-wit:

"Q. Mr. Hopkins, what would you say as to whether or not the Commission arbitrarily enrolled any Creek citizen?" and in admitting the answer of the witness thereto:

"A. No, sir, it did not."

XIII.

The court erred in overruling the objection of the complainant to the following question propounded by the solicitor for the defendants and interveners to the witness John G. Leiber, to-wit:

"Q. Now could you tell me whether or not the clerk, in making up this last card got some additional information over and above what was on the first card?"—and in admitting the answer of the witness thereto: "Yes, he certainly must have."

XIV.

The court erred in overruling the objection of the complainant to the following question propounded by the solicitor for the defendants and interveners to the witness Tams Bixby:

"Q. Mr. Bixby, I will ask you whether that portion of the letter which you have just read was the character of statement you 130 generally made with reference to schedule of names when you sent them to Washington to the Secretary of the Interior?"—and in admitting the answer of the witness thereto:

"A. Yes, sir, that is the character."

XV.

The court erred in overruling the objection of the complainant to the following question propounded by the solicitor for the defendants and interveners to the witness Tams Bixby:

"Q. Now, assuming that that statement in there was the statement you generally make in writing these letters, will you now state to the court whether or not you returned a schedule of each and every name to the Secretary of the Interior?"—and in admitting the answer of the witness thereto:

"A. Yes, sir."

XVI.

The court erred in overruling the objection of the complainant to the following question propounded by the solicitor of the defendants and interveners to the witness Tams Bixby:

"Q. And when you returned that schedule, I will ask you if, as a matter of fact, you didn't advise the Department you had made a full and complete and perfect investigation of each and every case?"—and in admitting in evidence the answer of the witness thereto:

"A. Yes, sir."

XVII.

The court erred in overruling the objection of the complainant to the following question propounded by the solicitor for the defendants and interveners to the witness Tams Bixby:

"Q. Then if you did, Mr. Bixby, when you sent every schedule to the Department, state if that is what you stated that you had made a complete and perfect investigation of each and every case and did you mean that you had satisfied your Commission that each and every one of those men were entitled to enrollment?"—and in admitting in evidence the answer of the witness thereto:

"A. Yes, sir."

XVIII.

The court erred in overruling the objection of the complainant to the following question propounded by the solicitor for the defendants and interveners to the witness Tams Bixby:

"Q. Then as a matter of fact, Mr. Bixby, every name you sent in to the Department of the Interior as a name to be enrolled and which had been enrolled as a member of the Creek Tribe has been investigated by some member of your Commission at some place and by evidence outside of the rolls a determination had been reached that that person was entitled to enrollment, ain't that so?"—and in admitting in evidence the answer of the witness thereto:

"A. Yes, sir, that is my opinion, my view."

XIX.

The court erred in overruling the objection of the complainant to the introduction in evidence and in admitting in evidence a certified copy of a letter dated March 3, 1902, and addressed to the Honorable Secretary of the Interior, written by the Commission to the Five Civilized Tribes, pertaining to a schedule of names, among them the name Barney Thlocco, of citizens of the Creek Nation as enrolled by the said Commission upon the final roll of citizens of said nation and therewith transmitted, and reciting, among other things, that said citizens were living on the 1st day of April, 1899, and that said Commission, after having thoroughly examined the rolls of the Creek Nation and such other evidence as had been submitted, touching the identification of the persons" on the roll therewith submitted, was of the opinion that "all are entitled to enrollment as Creek citizens by blood, and should be so enrolled."

XX.

The court erred in its finding of fact that the complainant failed to establish that there was no evidence before the Commission to the Five Civilized Tribes at the time it listed the name of Barney Thlocco for enrollment as a citizen by blood of the Creek Nation nor at any time prior to the preparation and forwarding by the Commission to the Five Civilized Tribes for approval by the Secretary of the Interior of the schedule upon which said name was placed by the said Commission.

XXI.

The court erred in sustaining the objection of the defendants and interveners to the following question propounded by the solicitor for the complainant to the witness Hecktor Beaver, to-wit:

"Q. Mr. Beaver, how far is your house to where Thlocco——"

XXII.

The court erred in rejecting the following evidence which complainant offered to prove by the witness Hecktor Beaver and by the following other witnesses, to-wit: Figey Blueford, Ben Combest, Jim

132 Combest, A. B. Comer, W. A. Christie, Martin Daugherty, Dan Dirt, J. J. Evans, Ben Hoter, Billy Johnson, Charlie Swift, Milannie, Thomas Vanderslice, Pete Washington, and

other witnesses produced by the complainant, and by records and documentary evidence:

"That Barney Thlocco in whose name the patent was made in this case died on or about the 10th day of January, 1899, at age of from forty-five to fifty years and prior to the 26th day of January, 1899; that Barney Thlocco was a resident of the Creek Indian settlement known as Hilliby where he had resided a number of years prior to his death; that said settlement is situated in what is known as Tuckabachie Town of the Creek Tribe of Indians and of which Barney Thlocco was a member. That during the winter of 1898 and 1899 the small-pox broke out in the Hilliby settlement, which disease at that time was supposed and believed by the Indians to be black measles and was so believed by them to be black measles until the 26th day of January, 1899. That on the 26th day of January, 1899, Lee Patrick, the then Indian Agent of the Sac and Fox Agency near the Hilliby Settlement was directed by the Secretary of the Interior to take steps to eradicate this disease among the Indians; that Mr. Patrick made inquiry and found the disease to be small-pox and established a pest camp in the settlement to which all the Indians affected with small-pox were removed; that the establishment of this pest camp was on the 26th day of January, 1899; that this pest camp was maintained until the eradication of the disease among the Indians in the spring of 1899; that Barney Thlocco died about two weeks before the establishment of this pest camp; that he was either the first or second Indian to die of this disease; that the first Indian to become afflicted therewith was Figey Blueford; that Barney Thlocco was a prominent Indian, that it was widely, generally and well known among all the inhabitants of this community that he died before the establishment of the pest camp on the date aforesaid; that a large number, approximately seventy-five of the Indians in the community died of the disease during the prevalence of this epidemic; that the official record of the small-pox camp kept by the Indian Agent Patrick will and does show that only one of such Indians died after April 1, 1899; that the name of this Indian who died after April 1, 1899, was Osar-heneka; that the Indian Agent Patrick, who was then the Indian Agent at the Sac and Fox Agency, was an employee and representative of the Department of the Interior of the United States. That the following named Indians,

to-wit: Tuskegee Harjo, Arch Johnson, Jimmie Deer, and
133 Sam Laslie attended the burial of Barney Thlocco, one of
them having made his coffin and others of them having dug
his grave, and buried him; and that these same persons afterwards
were taken with the small-pox and removed to the camp and that
all of them except Tuskegee Harjo died during the month of February,
1899, and that Tuskegee Harjo died January 27th, 1899; that
all of the members of the Barney Thlocco family consisting of himself
and three children died of the epidemic about that time except
Thlocco himself in the pest camp established in Hilliby shortly after
the establishment thereof and during the month of February, 1899,
Thlocco himself having died at the time aforesaid; that Barney
Thlocco's only living brother died during this epidemic in the month

of February, 1899, after having been present at the death of Barney Thlocco and at the burial of Barney Thlocco. That this was the only small-pox epidemic that ever occurred in the Hilliby Settlement and that the epidemic left very few survivors in the settlement."

XXIII.

The court erred in rejecting the following evidence offered by complainant: That portion of the separate answer of the defendant, the Black Panther Oil & Gas Company, filed October 28, 1914, in words as follows:

"This defendant admits that there was no controversy or contest of any kind put on before said Commission with respect to the enrollment of said Barney Thlocco or his right to be so enrolled, and in this connection this defendant avers that there was no ground for any controversy or contesting the right of said Barney Thlocco to receive an allotment, his enrollment not having been challenged in any manner."

XXIV.

The court erred in not permitting the complainant to prove that there was no instrument filed in the office of the Register of Deeds of Creek County, Oklahoma, until the year 1913 which in any manner affected the title to the lands in controversy.

XXV.

The court erred in not permitting the complainant to prove that a suit was instituted by the United States of America against the unknown heirs of Barney Thlocco in the United States Circuit Court for the Eastern District of Oklahoma on February 17, 134 1911, said suit being No. 1543, and that a decree was entered in said case on July 29, 1911, cancelling the patents to the lands in controversy issued to and in the name of Barney Thlocco.

XXVI.

The court erred in not permitting the complainant to prove by the witness W. H. Angell, from the records of the Superintendent for the Five Civilized Tribes, formerly the United States Indian Superintendent, formerly the Commission to the Five Civilized Tribes, that on July 20, 1913, there appeared before the Commissioner to the Five Civilized Tribes, certain persons, to-wit: M. L. Mott, National Attorney for the Creek Nation, and D. H. Bynum, representing the Creek Nation, and J. Coody Johnson of Wewoka, Oklahoma, and George M. Swift of Wewoka, Oklahoma, both representing the heirs of Barney Thlocco, deceased, at which time and place proceedings were had and testimony taken before the said Superintendent to obtain a restoration of the name Barney Thlocco to the rolls of Creek Indians from which his name had been stricken on December 13, 1906, by

The Secretary of the Interior, at which time the testimony of a number of witnesses was taken in relation to said application.

XXVII.

The court erred in rejecting the following evidence offered by complainant: That portion of complainant's Exhibit No. 1 in the words and figures as follows:

"No. 1, stricken from approved roll by authority of Department Dec. 13, 1906."

and to prove in connection with the introduction thereof that that entry was made on said exhibit before March 4, 1907, and immediately after the receipt of the letter of the Secretary of the Interior directing the Commission to cancel the enrollment of said name Barney Thlocco, which said letter forms and composes a part of the complainants Exhibit No. 7.

XXVIII.

The court erred in rejecting the following evidence offered by complainant: That portion of complainant's Exhibit No. 2, in words and figures as follows:

"Stricken by order of the Department, December 13, 1906."

and in not permitting the complainant to show that the above quoted portion of said Exhibit No. 2 was placed on the official roll of citizens by blood of the Creek Nation opposite the name Barney Thlocco pursuant to the letter of the Department of the Interior dated December 13, 1906, and immediately after the receipt of said letter by the Commission and prior to the 4th day of March, 1907.

XXIX.

The court erred in its order, ruling and directing that before the complainant would be permitted to introduce evidence in support of the averment contained in the bill of complaint as amended to the effect that Barney Thlocco died prior to April 1, 1899, it would be necessary for complainant to establish by evidence to the satisfaction of the court that the Commission to the Five Civilized Tribes in enrolling the name "Barney Thlocco" was a citizen by blood of the Creek Nation opposite roll No. 8592 upon the final roll of citizens by blood of said nation, acted arbitrarily, and without any evidence, information, knowledge or belief as to whether or not the said Barney Thlocco was living or dead on the 1st day of April, 1899.

XXX.

The court erred in not permitting the complainant to introduce evidence in support of its allegation that Barney Thlocco died prior to the 1st day of April, 1899, regardless of the question as to whether

or not the Commission to the Five Civilized Tribes in enrolling the name of Barney Thlocco with the approval of the Secretary of the Interior, acted arbitrarily, and without any evidence, knowledge, information or belief as to whether or not he was living or dead on the 1st day of April, 1899.

XXXI.

The court erred in ruling, holding and deciding that before the complainant was entitled to the relief prayed for, it must be proved that the enrollment of Barney Thlocco by the Commission to the Five Civilized Tribes was arbitrarily made.

XXXII.

The court erred in not finding, holding, ruling and deciding that the Commission to the Five Civilized Tribes enrolled Barney Thlocco without authority of law for the reason that the evidence introduced and the further evidence offered by the complainant shows 136 that Barney Thlocco was not living on April 1, 1899, and it was an essential prerequisite to his enrollment that he be alive on that date.

XXXIII.

The court erred in not finding, ruling, holding and deciding that the allotment of the lands involved in this controversy was not an allotment made and selected within the meaning of the Act of Congress approved March 1, 1901 (31 Stat. L. 861), for the reason that such allotment was arbitrarily made by the Commission to the Five Civilized Tribes to a person who was then dead and for whom no application for allotment had been made by any person whatever and the allotment certificate and patents were attempted to be issued to and were in the name of said deceased person.

XXXIV.

The court erred in ruling, holding and deciding that the Secretary of the Interior had no power or authority to cancel the enrollment of Barney Thlocco on the ground that title to the land embraced in such pretended allotment selection had passed out of the Creek Nation by the exception, approval and recordation of patents therefor, but which said patents had not been delivered to any person, but were, as they had been since their execution, in the possession of the Government.

XXXV.

The court erred in holding, ruling and deciding that after the passage of the Act of Congress, approved April 26, 1906 (34 Stat. L. 137), and under the provisions thereof, the Secretary of the Interior had no power or authority to cancel the enrollment of Barney Thlocco.

XXXVI.

The court erred in holding, ruling and deciding that the placing of the name of Barney Thlocco on the final roll of citizens of the Creek Nation was an adjudication of his right to be so enrolled, and that said enrollment had all the force and effect of a judgment and a judicial determination of his right to be enrolled, and in holding, ruling and deciding that such judgment could not be attacked by the complainant by proof that Barney Thlocco was not in fact living on April 1, 1899, and by proof that the Commission to the Five Civilized Tribes and the Secretary of the Interior had so found and determined as a result of proceedings instituted subsequent to his enrollment.

137

XXXVII.

The court erred in not finding, ruling, holding and deciding that the acts of the Commission to the Five Civilized Tribes and the Secretary of the Interior in the institution of proceedings to determine the date of the death of Barney Thlocco, the finding by said Commission and the said Secretary of the Interior, as a result of such proceedings, that he died prior to April 1st, 1899, and the cancellation of his enrollment by the said Secretary on such ground, were in fact and in effect, a reversal of the purported judgment enrolling said Barney Thlocco before the rights of any third person in the lands involved in this controversy had attached, and before any right, title or interest had vested in any such person in and to said lands.

XXXVIII.

The court erred in sustaining the motion of the defendants and interveners for the dismissal of the Government's bill of complaint as amended and the entry of a decree in favor of the defendants and interveners.

XXXIX.

The court erred in finding the issues against the complainant and in favor of the defendants and interveners.

XL.

The court erred in ordering, adjudging and decreeing that the complainant's bill of complaint, as amended, be dismissed, and in dismissing the same.

XLI.

The court erred in ordering, adjudging and decreeing that the complainant's bill of complaint, as amended, be dismissed with prejudice against another action on the same ground, and in so dismissing the same.

XLII.

The court erred in not ordering, adjudging and decreeing that the complainant do have the relief prayed for in its bill of complaint as amended.

Wherefore the complainant prays that the said decree be reversed and the District Court be instructed to enter a decree in accordance with the prayer of the amended bill of complaint, or that the United

States Circuit Court of Appeals for the Eighth Circuit shall
138 reverse said decree and on the record render a decree as prayed

for by complainant's said bill of complaint as amended, or if neither of these be deemed just and equitable that the said decree be reversed and a rehearing and retrial of said action by the District Court be ordered, and for all other proper relief.

D. H. LINEBAUGH,

United States Attorney;

W. P. Z. GERMAN,

Special Assistant United States Attorney,
Solicitors for Complainant.

Endorsed: Filed Sep. 22, 1915. R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

COPY BOUND C

In the United States Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

vs.

BESSIE WILDCAT et al., Appellees.

Citation.

The United States of America to Bessie Wildeat, a minor; Santa Watson, as guardian of Bessie Wildeat, a minor; Cinda Lowe, Louisa Fife, Annie Wildeat, Emma West, Martha Jackson, a minor; Saber Jackson, as guardian and next friend of Martha Jackson, a minor; J. Coody Johnson, Aggie Marshall, Phillip Marshall, H. B. Beeler, Max H. Cohn, Black Panther Oil & Gas Company, a corporation; Jack Gouge, Ernest Gouge, Mattie Bruner, formerly Mattie Phillips; Jennie Phillips, Billie Phillips, D. L. Berryhill, William McCombs, Barney Unussee, Baronssee Unussee, Johnathan R. Posey, Charles F. Bissett, Taxaway Oil Company, a corporation; F. L. Moore, J. S. Cosden, Fulhohchee Barney, Siah Barney, Tommy Barney, Mollie Barney, Toney Chupko, Joseph Chupko, James C. Chupko, Eddie Larney, Polly Yargee, Sarkarye Chupko, Dick Larney, Moser Chupko, Tommy Chupko, Linda Harjo, Mary Jones, Loley Cooper, Celia Yahola, Charles S. Smith, Nora Watson, a minor; John Smith, Lewis Smith, Lawrence Smith, Guy Smith, Ella Looney, nee Smith; Edna Pike, neé Smith; Pearlie Smith, Willie Smith, a minor; J. S. Tilly, guardian of Willie Smith, a minor; Rannie Smith, Elizabeth Rhyne, nee Smith; Rashie C. Smith, Montie Nunn, nee Smith; 139 Lou Smith, Howard Weber, Saber Jackson, Martha Simmons, Hannah Bullette, Robert Owen Burton, Nathaniel Mack Burton, Lydia Belle Wilson, nee Burton; Samuel L. Burton, Abi L. Miller, nee Burton; Minnie Ola Edwards, nee Burton; Mary Eliza Burton, J. W. McNeal, L. W. Baxter, and Dave Knight, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal filed in the office of the clerk of the United States District Court for the Eastern District of Oklahoma, wherein the United States of America is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the appellant, and which is appealed from as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Ralph E. Campbell, Judge of the United

States District Court for the Eastern District of Oklahoma, this 22nd day of September, 1915.

RALPH E. CAMPBELL,

United States Judge for the Eastern District of Oklahoma.

Service of the foregoing citation is acknowledged by the undersigned defendants and appellees by their solicitors of record on the dates indicated beside their respective names:

Oct. 15th, 1915.

GEO. S. RAMSEY,

EDGAR A. DE MEULES,

Solicitors for Bessie Wildcat, a Minor; Santa Watson, as Guardian and Guardian ad Litem for Bessie Wildcat, a Minor; Cinda Lowe, Louisa Fife, Annie Wildcat, and Emma West.

Oct. 15th, 1915.

RALPH P. WELCH AND
FRANKLIN & CAREY,

Solicitors for Aggie Marshall, Phillip Marshall, Celia Yahola, Toney Chupko, Joseph Chupko, James C. Chupko, Eddie Larney, Polly Yargee, Sarkarye Chupko, Dick Larney, Moser Chupko, Tommy Chupko, Linda Harjo, Mary Jones, and Loley Cooper.

Oct. 15, 1915.

MALCOLM E. ROSSER,
Solicitors for H. B. Beeler.

Oct. 15, 1915.

J. B. FURRY,
E. C. MOTTER,

Solicitors for D. L. Berryhill, Charles S. Smith, Nora Watson, a Minor; John Smith, Lewis Smith, Lawrence Smith, Guy Smith, Ella Looney, nee Smith; Edna Pike, nee Smith; Pearle Smith, Willie Smith, a Minor; J. S. Tilly, Guardian of Willis Smith, a Minor; Rannie Smith, Elizabeth Rhyne, nee Smith; Rashie O. Smith, Montie Nunn, nee Smith, and Lon Smith.

Oct. 15, 1915.

TURNER & TURNER,
OWEN & STONE,

Solicitors for Barney Unussee, or Barnosse Unussee; Fulhohchee Barney, Siah Barney, Tommy Barney, Mollie Barney.

Oct. 16, 1915.

F. SCRUGGS,

Solicitor for Johnathan R. Posey

Oct. 16, 1915.

BAILEY & WYAND,

Solicitors for Robert Owen Burton, Nathaniel Mack Burton, Lydia Belle Wilson, nee Burton; Samuel L. Burton, Abi L. Miller, nee Burton; Minnie Ola Edwards, nee Burton, and Mary Eliza Burton.

October 15, 1915.

HORACE SPEED,

Solicitor for J. W. McNeal and L. W. Baxter.

141

(Copy.)

In the United States Court for the Eastern District of Oklahoma,

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT et al., Appellees.

Citation.

The United States of America to Bessie Wildeat, a minor, Santa Watson, as guardian of Bessie Wildeat, a minor, Cinda Lowe, Louisa Fife, Annie Wildeat, Emma West, Martha Jackson, a minor, Saber Jackson, as guardian and next friend of Martha Jackson, a minor, J. Coody Johnson, Aggie Marshall, Phillip Marshall, H. B. Beeler, Max H. Cohn, Black Panther Oil & Gas Company, a corporation, Jack Gouge, Ernest Gouge, Mattie Bruner, formerly Mattie Phillips, Jennie Phillips, Billie Phillips, D. L. Berryhill, William McCombs, Barney Unussee, Barnossee Unussee, Johnathan R. Posey, Charles F. Bissett, Taxaway Oil Company, a corporation, F. L. Moore, J. S. Cosden, Fulhohichee Barney, Siah Barney, Tommy Barney, Mollie Barney, Toney Chupko, Joseph Chupko, James C. Chupko, Eddie Larney, Polly Yargee, Sarkarye Chupko, Dick Larney, Moser Chupko, Tommy Chupko, Linda Harjo, Mary Jones, Loley Cooper, Celia Yahola, Charles S. Smith, Nora Watson, a minor, John Smith, Lewis Smith, Lawrence Smith, Guy Smith, Ella Looney, nee Smith, Edna Pike, nee Smith, Pearlie Smith, Willis Smith, a minor, J. S. Tilly, guardian of Willis Smith, a minor, Rannie Smith, Elizabeth Rhyne, nee Smith, Rashie C. Smith, Montie Dunn, nee Smith, Lou Smith, Howard Weber, Saber Jackson, Martha Simmons, Hannah Bullette, Robert Owen Burton, Nathaniel Mack Burton, Lydia Belle Wilson, nee Burton, Samuel L. Burton, Abi L. Miller, nee Burton, Minnie Ola Edwards, nee Burton, Mary Eliza Burton, J. W. McNeal, L. W. Baxter, and Dave Knight.
Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the

City of St. Louis, Missouri, sixty days from and after the day the citation bears date, pursuant to an appeal filed in the office of the clerk of the United States District Court for the Eastern District of Oklahoma, wherein the United States of America is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the appellant, and which is appealed from as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Ralph E. Campbell, Judge of the
142 United States District Court for the Eastern District of Okla-
homa, this 22nd day of September, 1915.

RALPH E. CAMPBELL,
*United States Judge for the Eastern
District of Oklahoma.*

Service of the foregoing citation is acknowledged by the undersigned defendants and appellees by their solicitors of record on the dates indicated beside their respective names. This Oct. 14th, 1915.

MAX H. COHN,
By His Solicitors, LEDBETTER, STUART & BELL

(Copy.)

In the United States Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT et al., Appellees.

Citation.

The United States of America to Bessie Wildcat, a minor, Santa Watson, as guardian of Bessie Wildcat, a minor, Cinda Lowe, Louisa Fife, Annie Wildcat, Emma West, Martha Jackson, a minor, Saber Jackson, as guardian and next friend of Martha Jackson, a minor, J. Coody Johnson, Aggie Marshall, Phillip Marshall, H. B. Beeler, Max H. Cohn, Black Panther Oil & Gas Company, a corporation, Jack Gouge, Ernest Gouge, Mattie Bruner, formerly Mattie Phillips, Jennie Phillips, Billie Phillips, D. L. Berryhill, William McCombs, Barney Unussee, Barnossee Unussee, Johnathan R. Posey, Charles F. Bissett, Taxaway Oil Company, a corporation, F. L. Moore, J. S. Cosden, Fulhohchee Barney, Siah Barney, Tommy Barney, Mollie Barney, Toney Chupko, Joseph Chupko, James C. Chupko, Eddie Larney, Polly Yargee, Sarkarye Chupko, Dick Larney, Moser Chupko, Tommy Chupko, Linda Harjo, Mary Jones, Loley Cooper, Celia Yahola, Charles S. Smith, Nora Watson, a minor, John Smith, Lewis Smith, Lawrence Smith, Guy Smith, Ella Looney, née Smith, Edna Pike, née Smith, Pearle Smith, Willis Smith, a minor, J. S. Tilly, guardian of Willis Smith, a minor, Rannie Smith, Elizabeth Rhyne, née Smith, Rashie C. Smith, Montie Dunn, née Smith, Lou Smith, Howard Weber, Saber Jackson, Martha Simmons, Hannah Bullette, Robert Owen Burton, Nathaniel Mack Burton, Lydia Belle Wilson, née Burton, Samuel L. Burton, Abi L. Miller, née Burton, Minnie Ola Edwards, née Burton, Mary Eliza Burton, J. W. McNeal, L. W. Baxter, and Dave Knight, Greeting:

143 You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, Sixty days from and after the day this citation bears date, pursuant to an appeal filed in the office of the clerk of the United States District Court for the Eastern District of Oklahoma, wherein the United States of America is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the appellant, and which is appealed from as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Ralph E. Campbell, Judge of the United States District Court for the Eastern District of Oklahoma, this 22nd day of September, 1915.

RALPH E. CAMPBELL,
*United States Judge for the Eastern
District of Oklahoma.*

Service of the foregoing citation is acknowledged by the undersigned defendants and appellees by their solicitors of record on the dates indicated beside their respective names:

ROWLAND, TALBOTT & NYCE,
Att'ys for Dave Knight.

10/16/15.

In the District Court of the United States for the Western District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT et al., Appellees.

Service of the Citation in the above entitled cause is hereby acknowledged this 15th day of October, 1915.

STUART, CRUCE & CRUCE,
*Attorneys for Defendant, Black Panther
Oil and Gas Co.*

In the United States Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT et al., Appellees.

Acknowledgment of Service of Citation.

Service of the citation issued on the 22nd day of September, 1915, by the Honorable Ralph E. Campbell, United States Judge for the Eastern District of Oklahoma, citing appellees in the above entitled action to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the day said citation bears date, pursuant

144

to an appeal filed and allowed in said action, is acknowledged to have been made upon the undersigned appellees on this the 15th day of October, 1915.

HOWARD WEBER,
By J. J. SHEA,
BURDETTE BLUE,
His Solicitors.

In the United States Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT et al., Appellees.

Acknowledgment of Service of Citation.

Service of the citation issued on the 22nd day of September, 1915, by the Honorable Ralph E. Campbell, United States Judge for the Eastern District of Oklahoma, citing appellees in the above entitled action to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said action, is acknowledged to have been made upon the undersigned appellees on this the 15th day of October, 1915.

SABER JACKSON,
By JOHN DEVEREUX,
His Solicitor.

In the United States Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT et al., Appellees.

Acknowledgment of Service of Citation.

Service of the citation issued on the 22nd day of September, 1915, by the Honorable Ralph E. Campbell, United States Judge for the Eastern District of Oklahoma, citing appellees in the above entitled action to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty

days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said action, is acknowledged to have been made upon the undersigned appellees on this the 15th day of October, 1915.

JACK GOUGE,
ERNEST GOUGE,
MATTIE BURNER,
Formerly Mattie Phillips;
JENNIE PHILLIPS,
BILLIE PHILLIPS,
D. L. BERRYHILL, AND
WILLIAM McCOMBS,
By HASKELL B. TALLEY,
Their Solicitor.

145 In the United States Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,
v.

BESSIE WILDCAT et al., Appellees.

Acknowledgment of Service of Citation.

Service of the citation issued on the 22nd day of September, 1915, by the Honorable Ralph E. Campbell, United States Judge for the Eastern District of Oklahoma, citing appellees in the above entitled action to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said action, is acknowledged to have been made upon the undersigned appellees on this the 15th day of October, 1915.

CHARLES F. BISSETT,
TAXAWAY OIL COMPANY,
A Corporation;
F. L. MOORE AND
J. S. COSDEN,
By SHERMAN, VEASEY & DAVIDSON,
Their Solicitors.

In the United States Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT et al., Appellees.

Acknowledgment of Service of Citation.

Service of the citation issued on the 22nd day of September, 1915, by the Honorable Ralph E. Campbell, United States Judge for the Eastern District of Oklahoma, citing appellees in the above entitled action to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said action, is acknowledged to have been made upon the undersigned appellees on this the 15th day of October, 1915.

MARTHA JACKSON,
A Minor;

SABER JACKSON,

*As Guardian and Guardian ad Litem and Next Friend
of Martha Jackson, a Minor, and
J. COODY JOHNSON,
By J. COODY JOHNSON,
Their Solicitors.*

In the United States Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT et al., Appellees.

Service of the citation issued on the 22nd day of September, 1915, by the Honorable Ralph E. Campbell, United States Judge for the Eastern District of Oklahoma, citing appellees in the above entitled action to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said action, is acknowledged to have been

made upon the undersigned appellees on this the 15th day of October, 1915.

MARTHA SIMMONS AND
HANNAH BULLETTTE,
WM. A. COLLIER,
Their Solicitor

In the United States Court for the Eastern District of Oklahoma

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT et al., Appellees.

Acknowledgment of Service of Citation.

Service of the citation issued on the 22nd day of September, 1915, by the Honorable Ralph E. Campbell, United States Judge for Eastern District of Oklahoma, citing appellees in the above entitled action to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, six days from and after the day said citation bears date, pursuant to appeal filed and allowed in said action, is acknowledged to have been made upon the undersigned appellees on this the 15th day of October, 1915.

JACK GOUGE,
ERNEST GOUGE,
MATTIE BRUNER,
Formerly Mattie Phillips;
JENNIE PHILLIPS,
BILLIE PHILLIPS AND
WILLIAM McCOMBS,
By E. J. VAN COURT &
HAZEN GREEN,
Their Solicitors

In the United States Court for the Eastern District of Oklahoma

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT et al., Appellees.

Acknowledgment of Service of Citation.

Service of the citation issued on the 22nd day of September, 1915, by the Honorable Ralph E. Campbell, United States Judge for Eastern District of Oklahoma, citing appellees in the above entitled action to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, six days from and after the day said citation bears date, pursuant to appeal filed and allowed in said action, is acknowledged to have been made upon the undersigned appellees on this the 15th day of October, 1915.

Circuit Court of Appeals for the Eighth Circuit at the City of St. Louis, Missouri, sixty days from and after the day said citation bears date, pursuant to an appeal filed and allowed in said action, is acknowledged to have been made upon the undersigned appellees on this the 29th day of October, 1915.

M. M. TRAVIS,
*Administrator of the Estate of
Max H. Cohn, Deceased,*
By BELL & FELLOWS,
His Solicitors.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017. E. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, Minor, et al., Appellees.

Acknowledgment of Service.

Service of the citation issued in the above entitled cause, dated September 22, 1915, is hereby acknowledged.

Dated November 10th, 1915.

W. A. LEDBETTER,
*Solicitor for Anna Messenger,
Yetta Cohn and Isadore Cohn.*

In the United States District Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the praecipe of appellant, indicating the portions of the record to be incorporated in the transcript on appeal in said cause is hereby acknowledged, and failure to make such service prior to the date of filing said praecipe is hereby waived. Dated November 10th, 1915.

W. A. LEDBETTER,
*Solicitor for Anna Messenger,
Yetta Cohn and Isadore Cohn.*

And, to-wit, on the 30th day of October, A. D. 1915, the following proceedings were had in this cause. Honorable Ralph E. Campbell, Judge presiding.

In the United States Court for the Eastern District of Oklahoma,

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT et al., Appellees.

Order of Revivor.

Now on this the 30th day of October, 1915, the above entitled and numbered cause came on to be heard upon the suggestion of the death of the defendant and appellee, Max H. Cohn, and the voluntary appearance of M. M. Travis, administrator of his estate, filed herein on this day, and it appearing to the court that said Max H. Cohn departed this life on the 21st day of September, 1915, and that he left surviving him as his heirs his brothers and sisters residing without the jurisdiction of this court and in the States of Virginia and North Carolina, and that on the first day of October, 1915, M. M. Travis was appointed administrator of the estate of said deceased by the County Court of Tulsa County, Oklahoma, within the jurisdiction of this court;

It is considered, ordered, adjudged and decreed that this cause be revived in this court in the name of said administrator, and that he, said administrator, be substituted as a party defendant and appellee in lieu of the said Max H. Cohn, deceased.

RALPH E. CAMPBELL, Judge.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017. E.

THE UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Præcipe for Transcript.

To the Clerk of the above-named Court:

You will please incorporate into the transcript of record on the appeal taken by the complainant, the United States of America, in

In the case of the United States of America, complainant, v. Bessie Wildcat, a minor, et al., defendants, No. 2017-E, the following portions of the record, to-wit:

1. The amended bill of complaint filed July 15, 1914.
2. The order of the court entered September 22, 1915, as of August 1, 1914, granting leave to Charles F. Bissett, et al., to intervene and making them parties defendant.
3. The order of the court dated October 23, 1914, permitting Fulchhee Barney, et al., to intervene and making them parties defendant.
4. The order of the court dated September 22, 1915, as of October 1, 1914, permitting Howard Weber to intervene and making him party defendant.
5. The amended intervening petition of Charles F. Bissett, et al., filed November 2, 1914.
6. The order of the court dated September 22, 1915, made as of November 4, 1914, granting leave to Johnathan R. Posey to intervene and making him a party defendant.
7. The answer and cross-petition of Johnathan R. Posey filed November 4, 1914.
8. The order of the court dated November 4, 1914, granting leave to Toney Chupko, et al., to intervene and making them parties defendant.
9. The order of the court dated November 4, 1914, granting leave to Charles S. Smith, et al., to intervene and making them parties defendant.
10. The order of the court dated November 4, 1914, appointing Anna Watson as guardian ad litem for the defendant, Bessie Wildcat, a minor.
11. The order of the court dated November 5, 1914, appointing Saber Jackson as guardian ad litem for the defendant, Martha Jackson, a minor.
12. The order of the court dated November 13, 1914, appointing F. Brett as guardian ad litem for the defendants, Nora Watson, minor, and Willis Smith, a minor.
13. The order of the court dated November 23, 1914, granting leave to Saber Jackson to intervene and making him a party defendant.
14. The order of the court made and entered September 9, 1915, of November 23, 1914, granting leave to Martha Simmons, et al., to intervene and making them parties defendant.
15. The order of the court dated September 22, 1915, entered as May 4, 1915, granting leave to Robert Owen Burton, et al., to intervene and making them parties defendant.
16. The joint answer of the defendants and interveners, Bessie Wildcat, et al., filed May 4, 1915.
17. The motion of the complainant to strike the joint answer of the defendants and interveners, Bessie Wildcat, et al., filed May 4, 1915.
18. The order of the court made and entered on May 4, 1915,

- overruling the motion of the complainant to strike the joint answer
of the defendants and interveners, Bessie Wildeat, et al.
- 150 19. The order of the court made and entered — — —,
1915, setting said cause for trial.
20. The order of the court made and entered on May 3, 1915, con-
tinuing said cause to May 4, 1915, for trial.
21. The order of the court made and entered on May 4, 1915,
continuing said cause to May 5, 1915.
22. The statement of the evidence admitted and that offered and
rejected, at the final hearing of said action, the objections of counsel,
the rulings of the court thereon, all exceptions, the opinions of the
court announced at the said final hearing, motions made at said final
hearing, the objections thereto, the action of the court thereon and
exceptions saved, and all the proceedings had and conducted at said
final hearing, as contained in approved statement thereof.
23. The final decree of the court made and entered on May 8,
1915.
24. The order of the court made and entered on September 7,
1915, granting leave to J. W. McNeal, et al., to intervene and making
them parties defendant.
25. The order of the court made and entered on September 7,
1915, granting leave to Dave Knight to intervene and making him
a party defendant.
26. The petition for appeal and order allowing appeal.
27. The assignment of errors.
28. This praecipe for transcript.
29. Citation and acceptance of service.

And appellant further requests that the said record be printed
under the provisions of the act of Congress entitled "An act to di-
minish the expense of proceedings on appeal and writ of error, or
of certiorari" (approved February 13, 1911) and that same be filed
in the office of the clerk of the Circuit Court of Appeals for the
Eighth Circuit at St. Louis on or before sixty days from and after
September 22, 1915.

D. H. LINEBAUGH,

United States Attorney;

W. P. Z. GERMAN,

Special Assistant to the United States Attorney.

Solicitors for Appellant.

151 In the United States District Court for the Eastern District
of Oklahoma.

No. 2017-E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the praecipe of appellant indicating the portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated October 15, 1915.

BARNEY UNUSSEE OR
BARNOSSEE UNUNOSSEE,
FULHOHCHEE BARNEY,
SIAH BARNEY,
TOMMY BARNEY, AND
MOLLIE BARNEY,
By TURNER & TURNER,
OWEN & STONE,
Their Solicitors.

Dated October 16, 1915.

JOHNATHAN R. POSEY,
By F. SCRUGGS, *His Solicitor.*

Dated October 16, 1915.

ROBERT OWEN BURTON,
NATHANIEL MACK BURTON,
LYDIA BELLE WILSON, *Née*
BURTON,
SAMUEL L. BURTON,
MINNIE OLA EDWARDS, *Née*
BURTON,
ABI L. MILLER, *Née* BURTON,
AND
MARY ELIZA BURTON,
By BAILEY & WYAND,
Their Solicitors.

Dated October 15, 1915.

BESSIE WILDCAT, A MINOR;
SANTA WATSON,
As Guardian ad litem for
Bessie Wildcat, a Minor;

CINDA LOWE,
 LOUISA FIFE,
 ANNIE WILDCAT, AND
 EMMA WEST,
 By GEO. S. RAMSEY,
 EDGAR A. DE MEULES,
Their Solicitors.

Dated October 15th, 1915.

152

AGGIE MARSHALL,
 PHILLIP MARSHALL,
 CELIA YAHOLA,
 TONCY CHUPKO,
 JOSEPH CHUPKO,
 JAMES C. CHUPKO,
 EDDIE LARNEY,
 POLLY YARGEET,
 SARKARYE CHUPKO,
 DICK LARNEY,
 MOSER CHUPKO,
 TOMMY CHUPKO,
 LINDA HARJO,
 MARY JONES, AND
 LOLEY COOPER,
 By RALPH P. WELCH AND
 FRANKLIN & CAREY,
Their Solicitors.

Dated October 15th, 1915.

H. B. BEELER,
 By MALCOLM E. ROSSER,
His Solicitors.

Dated October 15, 1915.

D. L. BERRYHILL,
 CHARLES S. SMITH,
 NORA WATSON, A MINOR;
 JOHN SMITH,
 LEWIS SMITH,
 LAWRENCE SMITH,
 GUY SMITH,
 ELLA LOONEY, *Née* SMITH,
 EDNA PIKE, *Née* SMITH,
 PEARLIE SMITH,
 WILLIS SMITH, A MINOR;
 J. S. TILLY,
Guardian of Willis Smith, a Minor;
 RANNIE SMITH,
 ELIZABETH RHYNE, *Née* SMITH,
 RASHIE C. SMITH,

MONTIE NUNN, *Née* SMITH, AND
 LOU SMITH,
 By J. B. FURRY,
 E. C. MOTTER,
Their Solicitors.

Dated Oct. 15, 1915.

J. W. McNEAL AND
 L. W. BAXTER,
 By HORACE SPEED,
Their Solicitor.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017-E.

UNITED STATES OF AMERICA, Appellant,
 v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the praecipe of appellant indicating the portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated October 15, 1915.

DAVE KNIGHT,
 By ROWLAND, TALBOTT & NYCE,
His Solicitors.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017-E.

UNITED STATES OF AMERICA, Appellant,
 v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the praecipe of appellant indicating the portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated October 15th, 1915.

HOWARD WEBER,
 By J. J. SHEA,
 BURDETTE BLUE,
His Solicitors.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017-E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the praecipe of appellant indicating the portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated October 15, 1915.

SABER JACKSON.
By JOHN DEVEREUX.

His Solicitor.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017-E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the praecipe of appellant indicating the portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated October 15, 1915.

JACK GOUGE,
ERNEST GOUGE,
MATTIE BRUNER,
Formerly Mattie Phillips:
JENNIE PHILLIPS,
BILLIE PHILLIPS,
D. L. BERRYHILL, AND
WILLIAM McCOMBS.
By HASKELL B. TALLEY,
Their Solicitor.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017-E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the praecipe of appellant indicating the portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

154 Dated October 15th, 1915.

CHARLES F. BISSETT,
TAXAWAY OIL COMPANY, A CORPORA-
TION;
F. L. MOORE, AND
J. S. COSDEN,
By SHERMAN, VEASEY & DAVIDSON,
Their Solicitors.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017-E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the praecipe of appellant indicating the portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated October 15, 1915.

MARTHA JACKSON, A MINOR,
SABER JACKSON,
*As Guardian and Guardian ad litem and
Next Friend of Martha Jackson, a Minor, and*
J. COODY JOHNSON,
By J. COODY JOHNSON,
Their Solicitor.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017-E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the praecipe of appellant indicating the portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated October 15th, 1915.

MARTIA SIMMONS AND
HANNAH BULLETTE.

By WM. A. COLLIER,

Their Solicitor.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017-E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the praecipe of appellant indicating the portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

155 Dated October 16th 1915.

JACK GOUGE,

ERNEST GOUGE,

MATTIE BRUNER,

Formerly Mattie Phillips;

JENNIS PHILLIPS,

BILLIE PHILLIPS, AND

WILLIAM McCOMBS,

By E. J. VAN COURT,

HAZEN GREEN,

Their Solicitors.

the United States District Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the praecipe of appellant indicating the portions of the record to be incorporated in the transcript on the appeal said cause is hereby acknowledged.

Dated October 15th, 1915.

MAX H. COHN,
By LEDBETTER, STUART & BELL,
His Solicitors.

the United States District Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Service of a copy of the praecipe of appellant indicating the portions of the record to be incorporated in the transcript on the appeal said cause is hereby acknowledged.

Dated October 29th, 1915.

M. M. TRAVIS,
Administrator of the Estate of Max H. Cohn, Deceased,
By BELL & FELLOWS,
His Solicitors.

In the District Court of the United States for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT et al., Appellees.

Service of praecipe for portions of record which the plaintiff desires printed, is hereby acknowledged this 15th day of October, 1915.

STUART, CRUCE & CRUCE,
Attorneys for Defendant Black Panther Oil and Gas Co.

Endorsed: Filed Oct. 30, 1915, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

156 And, to-wit, on the 1st day of November, A. D. 1915, the Interveners J. W. McNeal and W. L. Baxter filed praecipe suggesting additional portion of the record necessary for this appeal, which praecipe is in words and figures as follows:

Praecipe of J. W. McNeal and W. L. Baxter, Suggesting Additional Portion of Record Necessary for This Appeal.

Horace Speed.

Geo. T. Brown.

Law Offices of Speed & Brown, Tulsa, Okla.

October 30, 1915.

Clerk U. S. Court, Muskogee, Oklahoma.

DEAR SIR: In the case of the United States of America v. Bessie Wildcat, No. 2017, in Equity, please incorporate into the transcript which goes to the U. S. Circuit Court of Appeals, the intervening petition of J. W. McNeal and W. L. Baxter, and consider this letter as a praecipe on their behalf for so doing.

Very respectfully,

HORACE SPEED.

H. S. /H.

Endorsed: Filed Nov. 1, 1915. R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

the District Court of the United States within and for the Eastern District of Oklahoma.

THE UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT, Minor; SANTA WATSON, as Guardian of Bessie Wildcat; Cinda Lowe, Louisa Fife, Annie Wildcat, Emma West, Martha Jackson, Minor; Sabel Jackson, as Guardian and Next Friend of Martha Jackson; J. Coody Johnson, Aggie Marshall, Phillip Marshall, H. B. Beeler, Max H. Cohn, Black Panther Oil & Gas Company, a Corporation; Mattie Bruner, Formerly Mattie Phillips; Jennie Phillips, Billie Phillips, D. L. Berryhill, William McCombs, Barnossee Unussee, Fulhohchee Barney, Siah Barney, Tommy Barney, Mollie Barney, Toney Chupko, Joseph Chupko, James C. Chupko, Eddie Larney, Polly Yargee, Née Larney; Tommy Chupko, Sarkarye Chupko, Dick Larney, a Minor; Moser Chupko, a Minor; Linda Harjo, Mary Jones, Loley Cooper, Hannah Bullette, Martha Simmons, Charles F. Smith, John Smith, Louis Smith, Lawrence Smith, Guy Smith, Ella Looney, Née Smith, Edna Pike, Née Smith; Pearl Smith, Nora Watson and Willis Smith, Minors; Rannie Smith, Elizabeth Rhyne, Née Smith; Rashio S. Smith, Montie Nunn, Née Smith; Lou Smith, 157 Saber Jackson, Jack Gouge, Ernest Gouge, Howard Weber; K. B. Turner and J. C. Stone, and K. B. Turner and J. C. Stone as Trustee for Barnosse Unussee, Fulhohchee Barney, Siah Barney, Tommy Barney, Mollie Barney, Sam T. Palmer, K. B. Turner, M. E. Turner, Thomas H. Owen and J. C. Stone; Robert Owen Burton, Nathaniel Mack Burton, Lydia Belle Wilson, Née Burton; Samuel L. Burton, Abi L. Miller, Née Burton; Millie Ola Burton; Mary Eliza Burton, David Knight, Charles Edwards, Née Burton; F. L. Bassett, Taxaway Oil Company, a Corporation; F. L. Moore, J. S. Cosden, Johnathan R. Posey, Defendants.

No. 2017. In Equity.

Intervening Petition of J. W. McNeal and L. W. Baxter.

J. W. McNeal and L. W. Baxter, residents and citizens of the City of Tulsa, in the Eastern District of the State of Oklahoma, pray to be allowed to intervene in the above entitled cause and set up their right, title and interest in and to the northwest quarter of section nine, township 18 north, range 7 east and to the oil and gas rights in said land against all the parties, both complainant and defendants and cross-complainants; and upon leave of court first had and obtained now file this their intervening petition against the said United States of America, and Bessie Wildcat, a minor, Santa Watson as guardian of Bessie Wildcat, Cinda Lowe, Louisa Fife, Anna Wildcat, Emma West, Martha Jackson, a minor, Saber Jackson as guard-

ian and next friend of Martha Jackson, J. Coody Johnson, Aggie Marshall, Phillip Marshall, H. B. Beeler, Max H. Cohn, Black Panther Oil & Gas Company, a corporation, Mattie Bruner, formerly Mattie Phillips, Jennie Phillips, Billie Phillips, D. L. Berryhill, William McCombs, Barnossee Unussee, Fulhohchee Barney, Siah Barney, Tommy Barney, Mollie Barney, Tommy Chupko, Joseph Chupko, James C. Chupko, Eddie Larney, Polly Yargee, née Larney, Toney Chupko, Sarkarye Chupko, Dick Larney, a minor, Moser Chupko, a minor, Linda Harjo, Mary Jones, Loley Cooper, Hannah Bullette, Martha Simmons, Charles F. Smith, John Smith, Louis Smith, Lawrence Smith, Guy Smith, Ella Looney, née Smith, Edna Pike, née Smith, Pearl Smith, Nora Watson and Willis Smith, minors, Rannie Smith, Elizabeth Rhyne, née Smith, Rashie C. Smith, Montie Nunn, née Smith, Lou Smith, Saber Jackson, Jack Gouge, Ernest Gouge, Howard Weber, K. B. Turner and J. C. Stone; and K. B. Turner and J. C. Stone as trustees for Barnossee Unussee, Fulhohchee Barney, Siah Barney, Tommy Barney, Mollie Barney, Sam T. Palmer, K. B. Turner, M. E. Turner, Thomas H. Owen and J. C. Stone, Robert Owen Burton, Nathaniel Mack Burton, Lydia Belle Wilson, née Burton, Samuel L. Burton, Abi L. Miller, née Burton, Mary Eliza Burton, David Knight, Charles Bissett, Taxaway Oil Company, a corporation, F. L. Moore, J. S. Cosden, Jonathan R. Posey, and for their cause of intervention say:

158 That on, to-wit, the first day of April, 1899, in the said Eastern District of Oklahoma, and in that part thereof known as the Creek Indian lands or reservation, the northwest quarter of section nine, township 18 north, range 7 east of the Indian meridian was a part of the lands belonging to the Creek Nation or Tribe of Indians authorized and directed under the laws of the United States and agreements between the United States and the said Creek Nation to be allotted to duly enrolled citizens and freedmen members of said Nation or Tribe of Indians. That among the persons then duly enrolled upon the official rolls of said nation as a citizen and member thereof was one Barney Thlocco, a Creek by blood and a member of said tribe, being the son of Hillabee Amarthla, a Creek Indian, and Linda, his wife, also a Creek by blood, and both upon said rolls as members and citizens of the Creek Nation by blood. That upon said rolls the said Barney Thlocco was shown to have been born on or about the 28th day of May, 1866, and he was thereupon in due form admitted to enrollment for allotment by the proper commission under the laws of the United States. He was admitted to enrollment under Roll No. 3021 and his enrollment was approved by the Secretary of the Interior on the 28th of March, 1902, and his name placed on the rolls of members by blood of said Creek Nation prepared by the Commission under authority of June 28th, 1898, opposite Roll No. 8592, which enrollment was approved by Sec. 28 of the Act of Congress entitled "An Act to ratify and confirm an agreement with the Choctaw and Chickasaw Tribes of Indians" and for other purposes, approved March 1, 1901; that the Secretary of the Interior on the 28th day of March, 1902, duly approved the en-

ollment of said Barney Thlocco as a member by blood of said Creek nation or Tribe of Indians, and thereafter, on June 30, 1902, the commission to the Five Civilized Tribes, acting under the laws of congress in that behalf and under the direction and supervision of the Secretary of the Interior, allotted to said Barney Thlocco the said northwest quarter of section nine, township 18 north, range 7 east; and that on the 11th day of March, 1902, a patent was duly executed and recorded to said Barney Thlocco by P. Porter, Principal Chief of the Creek Nation or Tribe of Indians.

That the said Barney Thlocco was living on the first day of April, 1899, and after said first day of April in said year 1899 or in the year 1900, as these petitioners are informed and believe, and 59 therefore charge the truth so to be, the said Barney Thlocco departed this life, intestate, leaving him surviving neither father nor mother, brother nor sister, nor wife nor issue; that the nearest relative to the said Barney Thlocco at the time of his death were the children and issue of his aunts, the sisters of his mother; that his mother had four sisters, to-wit, Maria, Malinda, Lucinda and Kizzie; that Maria had issue, Jack Gogue and Ernest Gouge, and no other issue; that Malinda, sometimes known as Winnie, had issue, D. L. Berryhill, and no other issue; that Lucinda had issue, Charles S. Smith, John F. Smith, Elizabeth Rhyne and Louis N. Smith, and no other issue; that the said John F. Smith died in, to-wit, 1905, leaving as his sole heirs at law Emma Smith, a daughter, John Smith, a son, Louis Smith, a son, Lawrence Smith, a son, Guy Smith, a son, Ella Looney, née Smith, a daughter, Edna Pike, née Smith, a daughter, Pearl Smith, a daughter, Willis Smith, a son, and Rannie Smith, his widow; that Willis Smith is a minor under the age of twenty-one years, and J. S. Tilly is his legal guardian, being duly appointed, qualified and acting by order of the County Court of Hughes County, State of Oklahoma; that said Emma Smith, daughter of said John F. Smith, died in 1907, intestate, and left as her only heir at law a daughter, Nora Watson, a minor under the age of eighteen years; that said Nora Watson has at this time no legal guardian; that said Louis N. Smith, the son of Lucinda Smith, died in 1909, intestate, leaving as his sole and only heirs at law a son, Rashie C. Smith, a daughter Montie Nunn, née Smith (enrolled Zular M. Smith), and the widow of Louis N. Smith, Lou Smith; that the said Kizzie, a sister of the said Linda, had issue, one daughter, to-wit, Sarah McCombs, who died in the year 1911 and left surviving as her sole and only heirs at law Billie Phillips, Mattie Bruner, née Phillips, Jennie Phillips, and William McCombs, her husband. That each of said four sisters of Linda died intestate at dates to these intervenors unknown.

That heretofore, to-wit, during the years 1913 and 1914 W. V. Thraves and R. C. G. Kiskaddon, commonly known as C. G. Kiskaddon, had offices together at Tulsa, Oklahoma, and were dealing together as jointly interested and partners in some matters of real estate and oil and gas leases; that during the year 1913 the said Thraves and the said Kiskaddon agreed between themselves that they would if possible obtain an oil and gas lease to all or a part

of the said northwest quarter of section nine, township 18 north range 7 east, and that they would share the expenses equally and would be equal partners in the profits; that under the said agreement and understanding and through the efforts of the said Thraves and Kiskaddon there were taken oil and gas leases upon the 160 said northwest quarter of section nine, township 18 north range 7 east from some of the heirs of the said Barnes Thlocco, copies of which leases are hereto attached as a part hereof and marked Exhibits A, B and C, respectively. That for the expense in obtaining said leases and obtaining information concerning said quarter section of land and investigating its oil and gas bearing qualities or character, the said Thraves and Kiskaddon each as occasion required, paid the expenses incurred by each respectively, and at the end of each month or some other appropriate time calculated the expenses and equally divided them. That at that time their offices were together under lease to the said Thraves who paid the rentals to the landlord, and said Kiskaddon paid his share of the rentals to the said Thraves. That the said Thraves and Kiskaddon went together to view the said described tract of land at the same times, they were looking at other oil properties in the neighborhood, and agreed that they would endeavor to secure a lease upon same; that for convenience the leases were taken in the name of the said Kiskaddon, to-wit, as Charley G. Kiskaddon meaning R. C. G. Kiskaddon, in the lease obtained from D. Berryhill, which lease was secured by the said Thraves in person and for like convenience the leases from Mattie Bruner, Jennie Phillips, Billie Phillips and William McCombs and from Jacob Gouge and Ernest Gouge were taken in the name of C. G. Kiskaddon at the office of the said Thraves and Kiskaddon and in the presence of said Kiskaddon. That thereafter other expenses were incurred by said Thraves and Kiskaddon with reference to and growing out of said leases and the expenses were divided equally as theretofore; that at that time no oil production was upon said tract of land nor near thereto, the closest being within a distance of two or three miles, the nearest well being in sections 19 and 20 in said township 18 and range 7, the well in section 19 being one owned by the said Kiskaddon or a company in which he was a managing officer; said wells being in the Wheeler sand, the Bartlesville sand at this time not having been discovered in the Cushing oil field in which the said tract of land is situated; that after acquiring the said leases many difficulties arose and expenses had to be met in connection with said leases and other persons and with the government officers with reference to said tract of land; that the major part of the work involved in those efforts had to be borne by the said Thraves; that because thereof and because of some other transactions between them it was determined late in 1913 or early in 1914 between the said Thraves and Kiskaddon that said Kiskaddon would sell and dispose of his interest in said tract of land to said Thraves, and the 161 agreement was made between them to that effect. That a portion of the interest of said Kiskaddon in said tract of land should be turned over to said Thraves for a consideration agreed upon b-

tween them; that under said agreement the said Kiskaddon ceased to bear any part of the expenses pertaining to the said tract of land or the leases thereon obtained as aforesaid, and thereafter there were many payments of money made because of said leases which were all borne and paid by the said Thraves to the knowledge of said Kiskaddon; that pursuant to said agreement letters were exchanged between said Thraves and Kiskaddon stating the agreement that for a consideration therein named the interest of said Kiskaddon should be transferred to said Thraves. That after the exchange of said letters other expenses as to said leases and under said leases arose, and each and all of them were paid by said Thraves, and no part thereof was paid or repaid at any time by said Kiskaddon; that the final payment for said interest of said Kiskaddon was to be paid on, to-wit, April 1, 1915; that prior to said date, on, to-wit, May 19, 1914, said Kiskaddon departed this life testate and that Mary M. Kiskaddon was under said will named executrix of said estate and thereupon she duly qualified and gave bond and was confirmed as such executrix, and entered upon the performance of her duties as such and so now remains; that payment of said sum was by said Thraves duly made to said executrix and that conveyance of the interest of said Kiskaddon in, to and under said leases was duly made to said Thraves. That the said Thraves for a valuable consideration sold, transferred and assigned all his right, title and interest under said leases and under his rights as a partner with said Kiskaddon to these intervening petitioners by his certain conveyance, a copy of which is hereto attached as a part hereof and marked Exhibit D.

That these intervening petitioners say that they are entitled under said conveyances and leases to a three-fourths interest in all the oil and gas produced or to be produced upon said tract of land, to-wit, the northwest quarter of section nine, township 18 north, range 7 east, since the date of said leases, to-wit, the month of August, 1913, subject, however, to the royalty due to the said lessors in said leases under the terms of the leases aforesaid.

These intervening petitioners respectfully show the court that without their knowledge or consent certain persons who were not the owners of said lease and not interested therein, and who are claiming antagonistic to the leases aforesaid, and to the rights of these intervening petitioners and of said Thraves and Kiskaddon under said leases aforesaid, have, in this court, entered into a combination together and thereunder did represent to this court

162 that they included all the heirs entitled to any rights or interests in and to any oil and gas to be taken from said tract of land, and did request this court to appoint a receiver for the oil and gas to be taken from said premises, and did request that this court order that a lease of all the oil and gas rights in and under said real estate be made, without asking any appraisement or advertisement, and without asking any bonus, and that it be made to the Black Panther Oil and Gas Company upon a royalty or rental of 25% of the gross amount of oil and gas to be produced from said land by the said Black Panther Oil & Gas Company, which should

be paid by said Black Panther Oil & Gas Company to one J. F. Darby as such receiver or to such other person or corporation as the receiver might direct, and that the said Black Panther Oil & Gas Company be allowed and directed to drill three wells on said tract of land and drill such other wells as to the said Black Panther Oil & Gas Company might seem best, and take therefrom all the oil and gas produced during the continuance of the litigation in this cause; and that out of the suggested royalty of 25% should be first paid all the expenses of the receivership, and also that said Black Panther Oil & Gas Company be allowed, at the final termination of this action, for the reasonable cash value of its interest in the corporeal properties, such as derricks, machinery, piping, casing tanks, etc., owned by it and then on the premises and necessary in the development of the oil and gas on said premises up to an amount not exceeding the total amount of the royalty so to be paid by said Black Panther Oil & Gas Company; but that under said order there was no amount stipulated nor any percent stipulated which should go to the owners of said oil and gas or said real estate, nor was said amount left to be determined by the court, nor was said amount left to be ascertained by the persons actually the owners of the oil and gas rights in said land, but said request proposed that in order to ascertain the amount of the reasonable cash value of such physical properties, that one person should be appointed by the Black Panther Oil & Gas Company and one person by the prevailing party or parties in that action, and that those two persons should meet and consider and appraise the reasonable cash value of said improvements, and whatever sum is agreed upon between them should be reported by them in writing to the court and same shall be taken as reasonable cash value, but that if they were unable to agree upon same then and in that event the Black Panther Oil & Gas Company and the prevailing party or parties shall report such disagreement to this court, and this court will thereupon appoint some fit and disinterested person as the third appraiser, and the three appraisers

shall then meet and consider such reasonable cash value, and
163 the concurring opinion of any two of the three of them, when reported in writing to this court, shall control and be conclusive as to such value between the said Black Panther Oil & Gas Company and the said prevailing party or parties, subject to the approval of the court.

These intervenors allege that at that time the interests of said owners under said leases were not represented in said court and no provision was made for the rights of the owners under said leases, nor were they given any opportunity under said proposed order to present the matter to the court or take judgment, nor were they to be heard as to the lease aforesaid to the said Black Panther Oil & Gas Company, nor was it to be possible to fix the value of such improvement until the end of the litigation and the final success of one of the parties, and no value could be fixed if the true owners turned out to be persons other than those so applying to have the oil and gas leases made: nor could the Black Panther Oil & Gas Company be prevented

from taking all the oil and gas, money and improvements to and for its own benefit and leave the property stripped of its great value.

That said application for receiver was made on the 8th day of April, 1914; that said application was not joined in by said Mattie Bruner, neé Phillips, nor Jennie Phillips, nor Billie Phillips, nor by William McCombs, nor Jack Gouge, nor Ernest Gouge, nor David L. Berryhill, nor any of them, nor was the same joined in by the said W. C. Thraves nor by the said R. C. G. Kiskaddon, nor were they made parties to said petition for the appointment of said receiver.

These intervenors show to the court that at the time said order was made neither R. C. G. Kiskaddon, who was then in life, nor W. C. Thraves were parties to said action, and under the terms of said application they could not be heard upon any question of value nor other question as to said lease.

These intervening petitioners further show to the court that the terms of the lease proposed were usual and unjust and should not be held to bind the owners of the rights under said leases taken in the name of said Kiskaddon; that the said proposed lease is an unusual one in that oil field and in the oil business in general, in this, to-wit, that at the end of the time of the lease and lessee is to be allowed out of the 25% royalty the then reasonable cash value of its interests in the corporeal property which it has been using and then on the property, to-wit, derricks, machinery, piping, casing, tanks, etc., and the value or costs of the wells drilled were to be allowed for by virtue of the provision that the expense of any dry holes drilled were not to be allowed for.

164 These intervenors allege that it is unusual, and so far as they know, without precedent that such provisions should be in an oil and gas lease; that it has been the usage always that the lessee pay these expenses.

These intervenors further show that the application was that the lease be made to Black Panther Oil & Gas Company without any advertising or any publicity, and without any opportunity to any regular oil producers to bid for the right to take said oil and gas from said land; that at that time the market was good for the leasing of such land at large values, and that individuals and corporations with abundant capital were ready and willing to take such property as the northwest quarter of section nine, township 18 north, range 7 east and pay a net bonus of 25% without any provision that the reasonable cash value of the corporeal property should be charged back to the owner or owners of the oil and gas rights in said land.

These intervenors further show to the court that at that time the Black Panther Oil & Gas Company was a corporation organized and existing under the laws of the State of Oklahoma; and the name "Black Panther" was taken from the nickname of one of the parties, to-wit, a colored citizen of the Creek Nation, one J. Coody Johnson by name, who won for himself the appellation "Black Panther" in the old territorial days, while working with the Creek Tribe of Indians, and who, by his ingratiating, insinuating and insidious characteristics of the animal for which he was named, was by the counsel of said tribe commonly designated and known as the "Black Pan-

ther"; when the said J. Coody Johnson had by his adroit and obsequious adulmentation, with the aid of his cohorts, and co-conspirator successively inveigled the officers of the government into agreeing to the unjust and unfair lease herein described, his associates did him the honor of naming this now celebrated company after him; and that while its authorized capital stock was stated at \$100,000.00 these petitioners are informed and believe, and therefore charge the truth so to be, that little or nothing was ever asked or paid in for the stock of said company, but that it was formed and organized with the intention and purpose of dividing the capital stock among the individuals who induced the making of the lease aforesaid; and that the Black Panther Oil & Gas Company had neither money in the treasury nor any other asset, nor was it in the oil and gas business, and had no experience in the oil business, and was not prepared for the handling and developing of the oil and gas rights on said property and was as aforesaid formed wholly and solely for the purpose

165 handling and speculating in such oil and gas in said tract of land; that a judgment against said Black Panther Oil & G

Company could not by execution or otherwise produce any result, unless said lease could be first had and profits or values obtained from said oil and gas rights in said land; that the Black Panther Oil & Gas Company has not now any property of any kind or character except such as has been obtained from the taking of oil and gas from said tract of land under the lease proposed by said application and order.

That thereafter, on the 17th day of April, 1914, being nine days after the filing of said application, an order of the court was signed apparently at the request of said applicants, which in said application stated that they were all of the parties interested, granted such lease to said Black Panther Oil & Gas Company, and that under said order a lease was executed, which was put on file, and copy of said lease is hereto attached as a part hereof and marked Exhibit A. That under said lease the said Black Panther Oil & Gas Company entered into possession of said tract of land and has therefrom taken oil as these intervening petitioners are informed and believe, and therefore charge the truth so to be, to the amount of \$800,000.00, and have paid over to the receiver aforesaid the sum of \$160,000.00, and now claim that they have improvements upon the said land which they will hold against the owners of said oil and gas rights to the amount of \$250,000.00, and that they will increase such claims for improvements to the extent of \$250,000.00; and that as one result of the provisions in said lease these intervening petitioners respectfully show to the court that at the present time the Black Panther Oil & Gas Company claims to have expended in such improvements the amount of, to-wit, \$250,000.00, and it is by the said Black Panther Oil & Gas Company and its associates now asserted that they will spend upon such alleged improvements before they are through developing said tract of land the sum of \$500,000.00, for which they will expect to be reimbursed by the persons owning the oil and gas rights in said land under the decree of this court, to be charged against the owners upon the theory that it is to be taken out of said royalty for said oil and gas

These intervening petitioners respectfully show that under these conditions the Black Panther Oil & Gas Company now claims that the owners of the oil and gas in said tract of land are indebted to them in the sum of \$250,000.00, or a sum, to-wit, of \$100,000.00 more than the royalty on all the oil and gas so far taken from said premises, and that the amount of \$2,000,000.00 must be taken from said tract of land in oil before one cent can be paid over to the

owners of the oil and gas rights in said land.

166 These intervenors further show to the court that when all of the oil and gas from said land is exhausted, said derricks, machinery, piping, casing, tanks, etc., will be wholly valueless and the same would be a total loss to the owners of said tract of land and to the owner or owners of the oil and gas rights in said land, and that such loss, which is usually and necessarily under ordinary leases borne by the lessee, is by the form of the proposed lease in said application shifted from the lessee to the lessor, and the valuation at such time is by the proposed order to be not the reasonable value to the owner or owners of the oil and gas rights in said land, but the reasonable cash value of the interests of the Black Panther Oil & Gas Company in said property which would necessarily mean the value of said property when properly taken care of and sold in the market where such properties are needed. That the owners of the oil and gas rights could not by any possibility be considered able or competent persons to obtain a fair price for such properties, whereas the lease of such rights could more properly be expected to dispose of such properties at a fair price or use them at other places where it might be doing business.

That there have been since said lease was made fourteen or fifteen wells drilled on said property, and that there are to be drilled on same eighteen or twenty additional wells in order to fully drain and exhaust said lands of its oil and gas; that the Black Panther Oil & Gas Company under said lease has, as these petitioners are informed and believe, and therefore charge the truth so to be, given a bond to J. F. Darby as receiver for the use and benefit of the parties interested in said action in the sum of \$25,000.00 to be approved by said J. F. Darby as receiver aforesaid, conditioned that the said Black Panther Oil & Gas Company would faithfully carry out and perform the provisions of its agreement with the receiver. Other than that, there is no bond given by said Black Panther Oil & Gas Company to pay the 25% of the gross amount of oil and gas produced from said land, nor is there any bond to the persons who are the true owners of the oil and gas rights in said land conditioned that the said Black Panther Oil & Gas Company will pay to the true owners or any of them the true amount of 25% of the gross amount of oil and gas taken from said land, nor has the said Black Panther Oil & Gas Company any assets out of which judgment could be made except oil and gas so taken from said land.

These intervening petitioners further show that the bond of \$25,000.00 from the Black Panther Oil & Gas Company is not a sufficient bond where the amount of oil and gas already taken from said 167 land is the sum of \$800,000.00 in value, which may run into several millions of dollars; that said bond as a matter of law

is not given or enforceable for the use and benefit of the owners of said oil and gas rights and could not be enforced in their behalf, even to the extent of said \$25,000.00; that at the time said bond was given the said Thraves and Kiskaddon were not parties to this action and such bond would not protect and did not protect any right whatever under the leases made in the name of said Kiskaddon as lessee as aforesaid, and as to the owners of the oil and gas rights under those leases the oil is being taken out by the Black Panther Oil & Gas Company without any security to the owners of such oil and gas rights whatsoever.

These intervening petitioners further show that this court on, to-wit, the 8th day of May, 1915, held, ordered and adjudged that the United States of America and the Creek Nation of Indians had no interest whatever in said tract of land, but that all the right, title and interest of the said United States of America and the Creek Nation of Indians in and to said land had been conveyed and passed by the patent to the said Barney Thlocco and was and is existing in his true heirs and inured to the benefit of them and their issue.

And these petitioners further show that if the leases to the said C. G. Kiskaddon aforesaid are valid, as these intervening petitioners aver, then and in that case the existing lease to said Black Panther Oil & Gas Company was made without their knowledge, consent or acquiescence and ought not to be considered a valid or existing conveyance or lease, and that the bond aforesaid is expressly limited to be in favor of the parties then to said action and that therefore said bond is not a bond in favor of the persons holding under said leases made in the name of said Kiskaddon or these intervening petitioners.

That since the court has declared that the heirs of Barney Thlocco are the owners of said property, it is eminently proper that the court should at this time order the entire property into the hands of a receiver for the purpose of conserving the entire property for the heirs or nearest of kin ultimately adjudged the owners of same; that the production of oil from said property is sufficient to defray the expenses of the further development of said property, and that such a receiver would save to the ultimate owners of said property three-fourths of the oil extracted from same which is now being appropriated by the Black Panther Oil & Gas Company under the original receiver's lease; that unless this is done and the court orders the said land into the hands of a receiver, the Black Panther

Oil & Gas Company, before this litigation is ended, if the
168 customary procedure is followed, will have entirely absorbed

or dissipated the said property, leaving to the final owners such improvements as the amount of royalty accumulated in the hands of the said receivers, J. F. Darby, may be sufficient to pay for. That but for the saving clause in the court order appointing said receiver, which reads as follows: "But the amount so to be allowed to the said Black Panther Oil & Gas Company shall in no event exceed the amount of royalty that has accrued in the hands of the said receiver for the benefit of the prevailing party or partie

to this suit," the receiver would now be in debt to the Black Panther Oil & Gas Company in a large sum of money, to-wit, more than \$100,000.00.

These petitioners further show that after the lease was made to said Black Panther Oil & Gas Company, said company did not proceed to do the drilling itself, but did contract with the Oklahoma Petroleum Company to do such drilling for one-half of the production. That said Oklahoma Petroleum Company was a corporation of the State of Delaware and had no property or assets in the State of Oklahoma so far as these petitioners are informed and believe, and therefore charge the truth so to be, nor were the persons owning and controlling the stock in said Oklahoma Petroleum Company professional operators, drillers or oil men, but were speculators.

That thereafter on, to-wit, the 24th day of August, 1914, the Oklahoma Petroleum Company assigned its interest under said lease and its contract with said Black Panther Oil & Gas Company to Howard Weber, in consideration whereof said Howard Weber surrendered to C. N. Haskell and L. E. Haskell their note of \$17,750.00 and executed to Joseph L. Hall six notes aggregating \$36,050.00 and agreeing to give to said Hall or order oil to the extent of \$20,000.00 amounting in all to a total of \$73,800.00, but nothing was given therefor to the Oklahoma Petroleum Company.

These petitioners further respectfully show to the court that on, to-wit, the 21st day of November, 1914, a contract and agreement was entered into by and between Barnossee Unussee, Fulhohchee Barney, Siah Barney, Tommy Barney, Mollie Barney, Sam T. Palmer, K. B. Turner, M. E. Turner, Thomas H. Owen and J. C. Stone, of the first part, and said Black Panther Oil & Gas Company and said Howard Weber of the second part, and K. B. Turner and J. C. Stone as trustees, of the third part, under which the said first parties undertook to lease unto said second parties the said northwest quarter of section nine, township 18 north, range 7 east, containing 160 acres, more or less, for so long a time as oil or gas

or either of them is produced from said land upon payment
169 by said parties of the second part to said trustees for the

use and benefit of the first parties of one-tenth of the gross proceeds of the sale of all oil and gas produced from said premises so long as production is had from and after November 7th, 1914; provided that the one-tenth royalty produced from a five-acre tract of said land known as the Posey tract should not be payable pending the final result of this cause, to-wit, No. 2017 in Equity, and with further provisions more particularly set out in said contract, a copy of which is hereto attached as a part hereof, and marked Exhibit F.

These petitioners further allege that under said contract said Black Panther Oil & Gas Company and said Howard Weber have been and are now paying out one-tenth of the proceeds of said oil from said tract of land and are not holding same and cannot account therefor under the law in case these petitioners or any persons other than the parties to said contract succeed in the trial of this cause, and can not return nor properly account for or replace the value

of said oil if the United States of America or the Creek Nation are entitled to demand repayment thereof; that said Black Panther Oil & Gas Company has, since the first day of January, 1915, without regard to its liabilities and responsibilities hereinbefore recited, paid out to its stockholders in the form of dividends the sum of, to-wit, \$50,000.00.

Your petitioners further show to the court that said Black Panther Oil & Gas Company and said Howard Weber have not paid for a large part of the improvements upon the said tract of land used for the taking of oil and gas under the aforesaid lease, but that the materials and improvements are unpaid for at this time to the extent of, to-wit, \$75,000.00, and the same is a lien, if said lease be a valid lease, upon the interest of whoever is the true owner or owners of said land and said oil and gas rights; that these petitioners allege that the same is a grave injury and wrong to the rights of these petitioners.

To the end therefore that the defendants and each of them severally make a true, full and perfect answer to each of the allegations of these intervening petitioners and may and will perform the orders of this court in the premises, these intervening petitioners pray that a writ of subpoena issue out of this court to each of the said defendants to this intervening petition, to-wit, Bessie Wildcat, minor, Santa Watson as guardian of Bessie Wildcat, Cinda Lowe, Louisa Fife, Annie Wildcat, Emma West, Martha Jackson, minor, Saber Jackson as guardian and next friend of

Martha Jackson, J. Coody Johnson, Aggie Marshal, Phillip
170 Marshall, H. B. Beeler, Max H. Cohn, Black Panther Oil
& Gas Company, a corporation, Mattie Bruner, formerly
Mattie Phillips, Jennie Phillips, Robert Owen Burton, Nathaniel
Mack Burton, Lydia Belle Wilson, née Burton, Samuel L. Burton,
Abi L. Miller, née Burton, Millie Ola Edwards, née Burton, Mary
Eliza Burton, David Knight, Charles F. Bissett, Taxaway Oil Com-
pany, a corporation, F. L. Moore, J. S. Cosden, Jonathan R. Posey,
Billie Phillips, D. L. Berryhill, William McCombs, Barnossee
Unussee, Fulhohee Barney, Siah Barney, Tommy Barney, Mollie
Barney, Toney Chupko, Joseph Chupko, James C. Chupko, Eddie
Larney, Polly Yargee, née Larney, Tommy Chupko, Sarkarye
Chupko, Dick Larney, a minor, Moser Chupko, a minor, Linda
Harjo, Mary Jones, Loley Cooper, Hannah Bullette, Martha Sim-
mons, Charles F. Smith, John Smith, Louis Smith, Lawrence Smith,
Guy Smith, Ella Looney, née Smith, Edna Pike, née Smith, Pearl
Smith, Nora Watson and Willis Smith, minors, Rannie Smith,
Elizazeth Rhyne, née Smith, Rashie C. Smith, Montie Nunn, née
Smith, Lou Smith, Saber Jackson, Jack Gouge, Earnest Gouge,
Howard Weber, K. B. Turner and J. C. Stone; and K. B. Turner
and J. C. Stone as trustees for Barnossee Unussee, Fulhohee Barney,
Siah Barney, Tommy Barney, Mollie Barney, Sam T. Palmer,
K. B. Turner, M. E. Turner, Thomas H. Owen and J. C. Stone,
directing them and each of them that they appear in this
court in this cause at a court day and set up their answer or defense

and stand to and perform the orders and decrees of this court in the premises.

Wherefore these intervening petitioners pray that the existing lease to the said Black Panther Oil & Gas Company be declared invalid and null and void and does not authorize the taking of any additional oil from said real estate; and that the court require that an accounting be made by the Black Panther Oil & Gas Company and Howard Weber for the amount of oil produced, the amount of oil sold, the prices received therefor, to whom it was distributed, the quantity to each, the expenses of the Black Panther Oil & Gas Company and Howard Weber in detail in the operation of said property, the amount that should now be allowed the Black Panther Oil & Gas Company and Howard Weber, that they be required to account for all oil taken out, including their reasonable and necessary expenses for drilling wells and performing their labor in and about the construction and development of oil wells, apparatus and tanks, piping, casing, tools, machinery and other equipment; that a receiver be appointed with directions to take charge of the oil and gas wells on said land and the equipment on said premises and all the oil in and upon said land in tanks or

otherwise, and all moneys, assets and property in the hands
171 or under the control of the present receiver, and that he operate said property under orders of this court and make monthly reports to this court of his proceedings in the premises.

And these intervening petitioners further pray that upon the hearing of this action the court order and decree that the right, title and interest in and to said oil and gas in and under the said northwest quarter of section nine, township 18 north, range 7 east and taken therefrom by said Black Panther Oil & Gas Company and Howard Weber is and should be the property of these intervening petitioners and the other heirs of the sisters of Linda, the mother of said Barney Thlocco, and decree that said Black Panther Oil & Gas Company and Howard Weber shall turn over to said receiver for the benefit of these intervening petitioners and said heirs all the oil they now have and to account for all of the oil and gas they have disposed of, and to render an accounting showing their necessary expenses in the premises, for which this court should allow a reasonable compensation and reimbursement; that they pay over to said receiver for the benefit of these intervening petitioners and said heirs the remainder of the value of all the oil and gas taken from said premises. And these intervening petitioners pray for all other relief equitable and proper in the premises.

J. W. McNEAL,
L. W. BAXTER,
By HORACE SPEED,
Their Attorney.

W. V. THRAVES.
Of Counsel.

STATE OF OKLAHOMA,
Tulsa County, ss:

J. W. McNeal and L. W. Baxter, being first duly sworn, upon oath, each for himself, deposes and says that he has read the foregoing intervening petition and knows the contents thereof, and that the allegations therein are true, as he is informed and verily believes.

J. W. McNEAL.
L. W. BAXTER.

Subscribed and sworn to before me, a notary public within and for the County of Tulsa, State of Oklahoma, on this 7th day of June, 1915.

[SEAL.]

CHESTER A. STACY,
Notary Public.

My commission expires Aug. 29, 1916.

"EXHIBIT D."

Oil and Gas Lease.

This agreement made and entered into this 21st day of November, 1914, by and between Barnessee Unussee, Fulhohchee 172 Barney, Siah Barney, Tommy Barney, Mollie Barney, Sam T. Palmer, K. B. Turner, M. E. Turner, Thomas H. Owen and J. C. Stone of the first part, hereinafter called lessors, and Black Panther Oil & Gas Company a corporation, and Howard Weber of the second part, hereinafter called lessees, and K. B. Turner and J. C. Stone, parties of the third part, as Trustees, for parties of the first part, Witnesseth:

That said lessors for and in consideration of the sum of \$1.00 in hand paid and of the covenants and agreements hereinafter contained, as their respective interests may appear, have granted, bargained, leased and let, and by these presents do grant, demise, lease and let unto said lessees, for the sole and only purpose of mining and operating for oil and gas and of laying pipe lines and of building tanks, power stations and structures thereon, to produce, save and take care of said production, all that certain tract of land situate in Creek County, State of Oklahoma, described as follows, to-wit: the northwest quarter of section 9, township 18 north, range 7 east, the Barney Thloco allotment, containing 160 acres, more or less, according to the government survey thereof.

I.

It is agreed that this lease shall remain in force so long as oil and gas or either of them is produced from said land.

II.

Parties of the second part shall pay or cause to be paid to the

es of the third part or their successors in trust for the use and fit of the parties of the first part, their heirs or assigns, as their rests may appear, one-tenth (1/10) of the gross proceeds of all land gas produced from said premises, the same to be payable as production is had, run and sold from and after the 7th day of November, 1914, it being agreed there was on hand on the 7th day of November, 1914, sixty thousand (60,000) barrels of oil, and that proceeds from the sale of the first sixty thousand (60,000) barrels of oil sold after November 7th, 1914, shall be received by the Black Panther Oil & Gas Co. and Weber; provided, however, that one-tenth (1/10) royalty insofar as same is produced from a certain five acres known as the "Posey tract," to-wit, the west half of southwest quarter of the southwest quarter of the northwest quarter shall not be payable pending the final result of the case pending in the United States Court at Muskogee, No. 2017 in Equity, styled United States v. Bessie Wildcat and others, and said money shall be payable when and upon the condition that final decree is entered in said cause against said Posey, Charles F. Bissett and others claiming through an alleged filing upon said five acres by said Posey; provided, further, that said trustees shall pay or cause to be paid from their said moneys as they becomes payable to said trustees, to Howard Weber, or his heirs, the one-fourth ($\frac{1}{4}$) part thereof, until said one-fourth amounts to \$6,000.

III.

If parties of the first part or any of them win by final decree in said cause they shall share according to their established interest in the land the 25% paid and to be paid into the hands of the receiver in said cause and the same shall be paid to said trustees; after final decree, their royalty shall continue upon the 25% basis, viz: twenty-five percent (25%) of the gross proceeds of sales that they shall receive as from the first of the developments to the end of the lease that part of the 25% royalty which their receiver may bear to the whole title; and said ten percent (10%) royalty shall be deducted from the total amount due the parties of the first part upon the twenty-five percent (25%) royalty basis. It shall be repaid by the receiver to the Black Panther Oil & Gas Company and Howard Weber equally out of the 25% royalty now being impounded in the hands of J. F. Darby, receiver.

IV.

If the United States, by final decree, wins in said suit and cancels allotment of Barney Thlocco, then upon payment of said 10% royalty as provided herein accrued to that date, this contract shall terminate.

V.

If any person or persons other than Martha Jackson, Barrossee Mussee, Fulholchee Barney, Siah Barney, Tommy Barney or

Mollie Barney shall win by final decree in said cause, the entire title of said property, then this contract shall terminate of date of said final decree the payment of all sums due hereunder. In case Martha Jackson shall finally be decreed to be the owner of any portion of the land above described, and the other claimants, parties to this contract shall be denied any ownership in said land by final decree, then and in that event, the lessees herein, or their assigns, shall continue to pay to said trustees for the use and benefit of the parties of the first part, one-tenth (1/10) royalty on all the oil and gas produced from that portion of said land finally decreed to Martha Jackson.

174

VI.

By final decree as used herein is meant the final judgment or decree in said cause after decision by the Supreme Court of the United States or the abandonment of the right of appeal.

VII.

It is agreed by the parties of the first part that they will not while oil and gas being produced from the premises described herein, execute any agricultural or grazing lease upon said premises or take possession of the surface of said land either themselves or through any one else without the written consent of the lessees herein or their assigns.

VIII.

It is understood by and between the parties hereto that this lease contract is not intended as a recognition of the claim of the title of anybody hereto superior to that of any other and that this lease is not intended to effect in any way the rights of any of said parties as between themselves under contracts now existing.

IX.

Said second parties shall have the right to use any timber now upon said land, the right to use any water thereon, or to impound water by dams, ponds, tanks or otherwise, to erect and maintain wooden and steel tankage for the proper operation of the lease. Said second parties shall have the right, at the termination of this lease, or when it shall cease to produce oil and gas, to remove all equipment, derricks, machinery, buildings, pipe lines and casing from said land and shall have a period of ninety (90) days after the expiration of said lease in which to remove the same.

Said parties of the second part shall have the use of gas produced from said premises, free of charge, for the purpose of conducting operations upon said lease for oil and gas and for the purpose of heating any building that they may erect thereon.

In witness whereof the parties hereto have set their hands and
is on this the 21st day of November, 1914.
Executed in Quadruplicate.

FULHOHCHEE BARNEY, (Her Thumb Mark);
SIAH BARNEY, (His Thumb Mark);
TOMMY BARNEY, (His Thumb Mark);
MOLLIE BARNEY, (Her Thumb Mark);

Parties of the First Part.

BLACK PANTHER OIL & GAS COMPANY,
By JAMES BRAZZELL, Pres. [CORPORATE SEAL.]
HOWARD WEBER,
By JOHN J. SHEA, Atty in Fact,

Parties of the Second Part.

J. C. STONE,
K. B. TURNER,

Parties of the Third Part, as Trustees.

Attest:

C. T. GOW.

Signature of Fulhohchee Barney, Siah Barney, Tommy Barney
and Mollie Barney witnessed by me at their request and in their
presence.

Wit.:

FELIX P. CANARD,
WALLACE C. COOK.

BARNOSSEE UNUSSEE,
J. C. STONE,
K. B. TURNER,
SAM T. PALMER,
M. E. TURNER,
THOMAS H. OWEN.

O. K.:

J. G. HARLEY,
Atty for Black Panther Oil & Gas Co.

O. K.:

HOWARD WEBER,
By J. J. SHEA.

Examined and approved this 23rd day of November, 1914.

[C. J. Seal.]

* T. H. WRENN,
County Judge.

Addenda to Section 5.

It is stipulated and agreed that Section 5 of the foregoing con-
tract and its provisions with reference to the recovery of Martha

Jackson shall also apply to Saber Jackson and any interest, if any, he may be decreed in said land in controversy.

BLACK PANTHER OIL & GAS CO.,

By J. G. HARLEY,

C. B. STONE, AND

J. C. JOHNSON,

Its Atty's.

HOWARD WEBER,

By JOHN SHEA, *Atty in Fact.*

Parties of the Second Part.

EXHIBIT —.

Oil and Gas Lease.

Agreement, Made and entered into the 15th day of August, A. D. 1913, by and between Mattie Bruner, formerly Mattie Phillips, Jennie Phillips, Billie Phillips and William McCombs of 176 Eufaula, Okla., parties of the first part, lessors, and C. G. Kiskaddon of Tulsa, Okla., party of second part, lessees.

Witnesseth, That the said parties of the first part, for and in consideration of the sum of One Dollar to them in hand well and truly paid by the said party of the second part, the receipt of which is hereby acknowledged, and of the covenants and agreements herein-after contained on the part of the party of the second part to be paid, kept and performed, have granted, demised, leased and let and by these presents do grant, demise, lease and let unto the said second party his heirs, executors, administrators, successors or assigns, for the sole and only purpose of mining and operating for oil and gas, and of laying pipe lines, and of building tanks, powers, stations and structures thereon to produce and take care of said products, all that certain tract of land situate in the County of Creek, State of Oklahoma, described as follows, to-wit: The Northwest Quarter (N. W. 1/4) of section 9, township 18 N., range 7 east and containing 160 acres, more or less.

It is agreed that this lease shall remain in force for a term of five years from this date and as long thereafter as oil or gas, or either of them, is produced from said land by the party of the second part his heirs, administrators, executors, successors or assigns.

In consideration of the premises the said party of the second party covenants and agrees:

1st. To deliver to the credit of the owners as hereinafter provided, their heirs or assigns, free of cost, in the pipe line to which it may connect its wells, the equal one-eighth (1/8th) part of all oil produced and saved from the leased premises.

2nd. To pay the owners as hereinafter provided One Hundred Fifty Dollars each year in advance, for the gas from each well where gas only is found, while the same is being used off the premises, and the first parties to have gas free of cost from any such well for stoves

ad inside lights in the principal dwelling house on said land during the same time by making their own connections with the well.

3rd. To pay the first party for gas produced from any oil well and used off the premises at the rate of Fifty Dollars per year, for the time during which such gas shall be used, said payments to be made each three months in advance.

The party of the second part agrees to complete a well on said premises within one year from the date hereof, or pay owners at the rate of One Hundred Sixty Dollars for each additional year such completion is delayed from the time above mentioned for the full completion of such well until a well is completed; and it is agreed that the completion of such well shall be and operate as a full liquidation of all rent under this provision during the remainder of the term of this lease.

The party of the second part shall have the right to use, free of cost, gas, oil and water produced on said land for its operations thereon, except water from wells of first party.

When requested by first party, the second party shall bury its pipe lines below plow depth.

No well shall be drilled nearer than 200 feet to the house or barn on said premises.

Second party shall pay for damages caused by drilling to growing crops on said land.

The party of the second part shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

The party of the second part shall not be bound by any change in ownership of said land until duly notified of any such change either by notice in writing duly signed by the parties to the instrument of conveyance, or by receipt of the original instrument of conveyance, or a duly certified copy thereof.

All payments which may fall due under this lease may be made directly to the first parties or deposited by second party to their credit in Eufaula National Bank of Eufaula, Okla.

The party of the second part, its successors or assigns shall have the right at any time, on the payment of Ten Dollars to the parties of the first part, their heirs or assigns to surrender this lease for cancellation, after which all payments and liabilities thereafter to accrue under and by virtue of its terms shall cease and determine; provided, this surrender clause and the option therein reserved to the lessee shall cease and become absolutely inoperative immediately and concurrently with the institution of any suit in any court of law or equity by the lessee to enforce this lease, or any of its terms, or to recover possession of the leased land, or any part thereof, against or from the lessors their heirs, executors, administrators, successors or assigns, or any other person or persons. All covenants and agreements herein set forth between the parties hereto shall extend to their successors, heirs, executors, administrators and assigns.

It is understood and agreed that the first parties are only part owners of the above described premises and the proportion to be

paid them of the royalties, rentals and other sums payable
 178 hereunder by the second party, shall be that proportion which
 the interest of the first parties in said premises bears to the
 entire interest.

Witness the following signatures and seals:

_____.
_____.
_____.

MATTIE BRUNER, [SEAL.]
Formerly Mattie Phillips.
 JENNIE PHILLIPS, [SEAL.]
 BILLIE PHILLIPS, [SEAL.]
 WM. McCOMBS, [SEAL.] . .

(*Acknowledgment to the Lease.*)

STATE OF OKLAMOMA,
County of ——, ss:

Be it Remembered, That on this 21st day of August, in the year of our Lord one thousand nine hundred and thirteen, before me, a notary public in and for said County and State, personally appeared Mattie Bruner, formerly Mattie Phillips, Jennie Phillips, Billie Phillips, and William McCombs to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

In witness whereof I have hereunto set my official signature and affixed my notarial seal the day and year first above written.

[SEAL.]

RALPH L. ROE,
Notary Public.

My commission expires May 14th, 1917.

EXHIBIT —.

Oil and Gas Mining Lease.

This Indenture Made this 5th day of August, A. D. 1913, by and between D. L. Berryhill of Okmulgee, Okla., party of the first part, and Charley G. Kiskaddon of Tulsa, Okla., party of the second part,

Witnesseth: That first party, for and in consideration of the sum of One Dollar (\$—) unto first party well and truly paid by second party, at or before the signing and delivery hereof, the receipt whereof the first party does hereby acknowledge, has granted, demised and let, and by these presents does grant, demise and let unto the second party, all the oil and gas in and under the following described tract of land, and also the said tract of land itself, for

179 the purpose of operating thereon for oil and gas, with the right to use water therefrom and with all rights and privileges necessary or convenient for conducting the said oil and gas operations, and for the transportation of oil and gas from and over the said tract of land, and waiving all right to claim or hold, as fixtures or part of the realty, any of the property and improvements which second party may place or erect in or upon said land, and agreeing that all such property or improvements may be removed by second party at any time before or after the termination hereof. The said tract of land is situate in Creek County, State of Oklahoma, and is more particularly described as follows: The Northwest Quarter (N. W./4) section 9, township 18 N., range 7 E., containing 160 acres, more or less; but no well shall be drilled within — feet of the present buildings on said tract of land without the consent of first party. First party expressly releases and waives all rights under and by virtue of the homestead exemption laws of the State of Oklahoma.

To have and to hold the same unto the said party of the second part, its successors and assigns, for the term of 15 years from the date hereof, and as much longer as oil or gas is found in paying quantities, excepting and reserving to first party the one-eighth part of all the oil produced and saved from the said premises to be delivered into the pipe line to the credit of first party free of cost, and should any well produce gas in sufficient quantities to justify marketing the same, second party shall pay therefor at the rate of \$150.00 (\$150.00) per annum, payable within thirty days from the time that gas is used therefrom, and yearly thereafter for such time as gas therefrom is so marketed. And first party shall also, so long as gas is so utilized, have gas free of cost sufficient for — stoves and — lights in one dwelling house on said tract of land, such gas to be delivered to first party at the well, and all pipe or connections therefrom to the dwelling house to be laid and made by first party; second party shall also have the right to use sufficient gas, oil or water from the premises to run all necessary machinery for drilling or operating its wells on said land.

Second party agrees to complete a well on the above described tract of land within one year from date perfect title is vested in party of second part thereafter pay first party a rental of One Hundred Sixty Dollars (\$—) per annum, payable annually in advance until such well is completed. All payments under this lease may be made by check mailed direct to first party at Okmulgee, Oklahoma, or deposited to the credit of the first party in the First National Bank of Okmulgee, Okla., and any payment due hereunder made by depositing the same to the credit of first party in said bank, shall bind 180 any subsequent purchaser of the above described land with the same effect as though said payment were made direct to said purchaser.

For the consideration above named first party also grants to second party the right at any time, upon payment to first party of — Dollars (\$—) to surrender up this lease and be discharged from all liability thereunder arising after such surrender, and upon such sur-

render this lease shall at once cease and determine and no longer be binding upon either party, Provided, that in the event any suit or action is brought in any court by the lessee to enforce this lease, then this clause, providing for a surrender of this lease by the second party, shall become inoperative and of no effect between the parties from the time of the commencement of such suit or action.

This lease shall bind and run in favor of the respective heirs, executors, administrators, successors and assigns of the parties hereto.

In Witness Whereof, the parties have hereunto set their hands and affixed their seals the day and year first above written.

D. L. BERRYHILL. [SEAL.]

Approved Aug. 5th, 1913.

[SEAL.] MARK L. BOZARTH,
County Judge.

STATE OF OKLAHOMA,
County of Okmulgee, ss:

Before me, a notary public in and for said County and State, on this 5th day of August, 1913, personally appeared D. L. Berryhill to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, for the uses and purposes therein set forth.

[SEAL.] A. R. WINFREY,
Notary Public.

My commission expires June 26, 1916.

EXHIBIT —.

Oil and Gas Lease.

Agreement, Made and entered into the 22nd day of August, A. D. 1913, by and between Jack Gouge and Earnest Gouge of Hanna, Okla., parties of the first part, lessors, and C. G. Kiskaddon of Tulsa, Okla., party of the second part, lessees.

Witnesseth, That the said parties of the first part, for and in consideration of the sum of One Dollar to them in hand well and 181 truly paid by the said party of the second part, the receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of the party of the second part to be paid, kept and performed, have granted, demised, leased and let and by these presents do grant, demise, lease and let unto the said second party his heirs, executors, administrators, successors or assigns, for the sole and only purpose of mining and operating for oil and gas, and of laying pipe lines, and of building tanks, powers, stations and structures thereon to produce and take care of said products, all that certain tract of land situate in the County of Creek, State of Oklahoma, described as follows, to-wit: The North-

west Quarter (NW⁴) of section 9, township 18 N., range 7 east and containing 160 acres, more or less.

It is agreed that this lease shall remain in force for a term of five years from this date and as long thereafter as oil or gas, or either of them, is produced from said land by the party of the second part his, administrators, executors, successors or assigns.

In consideration of the premises the said party of the second part covenants and agrees:

1st. To deliver to the credit of the owners as hereinafter provided their heirs or assigns, free of cost, in the pipe line to which it may connect its wells, the equal one-eighth ($\frac{1}{8}$ th) part of all oil produced and saved from the leased premises.

2nd. To pay the owners at the rate of One Hundred Fifty Dollars each year in advance, for the gas from each well where gas only is found, while the same is being used off the premises, and the first part to have gas free of cost from any such well for — stoves and — inside lights in the principal dwelling house on said land during the same time by making — own connections with the well.

3rd. To pay the owners as hereinafter provided for gas produced from any oil well and used off the premises at the rate of Fifty Dollars per year, for the time during which such gas shall be used, said payments to be made each three months in advance.

The party of the second part agrees to complete a well on said premises within one year from the date hereof, or pay at the rate of One Hundred Sixty Dollars for each additional year such completion is delayed from the time above mentioned for the full completion of such well until a well is completed; and it is agreed that the completion of such well shall be and operate as a full liquidation of all rent under this provision during the remainder of the term of this lease.

182 The party of the second part shall have the right to use, free of cost, gas, oil and water produced on said land for its operations thereon, except water from wells of first party.

When requested by first party, the second party shall bury its pipe lines below plow depth.

No well shall be drilled nearer than 200 feet to the house or barn on said premises.

Second party shall pay for damages caused by drilling to growing crops on said land.

The party of the second part shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

The party of the second part shall not be bound by any change in ownership of said land until duly notified of any such change, either by notice in writing duly signed by the parties to the instrument of conveyance, or by receipt of the original instrument of conveyance, or a duly certified copy thereof.

The payments which may fall due under this lease may be made directly to the first parties or deposited by the second party to their credit in Eufaula National Bank of Eufaula, Okla.

The party of the second part, its successors or assigns shall have

the right at any time, on the payment of Ten Dollars to the parties of the first part, their heirs or assigns to surrender this lease for cancellation, after which all payments and liabilities thereafter to accrue under and by virtue of its terms shall cease and determine; provided, this surrender clause and the option therein reserved to the lessee shall cease and become absolutely inoperative immediately and concurrently with the institution of any suit in any court of law or equity by the lessee to enforce this lease, or any of its terms, or to recover possession of the leased land, or any part thereof, against or from the lessors, their heirs, executors, administrators, successors or assigns, or any other person or persons. All covenants and agreements herein set forth between the parties hereto shall extend to their successors, heirs, executors, administrators and assigns.

It is understood and agreed that the first parties are only part owners of the above described premises, and the proportion to be paid them of the royalties, rentals and other sums payable hereunder by the second party, shall be that proportion thereof which the interest of the first parties in said premises bears to the entire interest.

183 Witness the following signatures and seals:

_____.
_____.
_____.

JACK GOUGE. [SEAL.]
ERNEST GOUGE. [SEAL.]

(Acknowledgment to the Lease.)

STATE OF OKLAHOMA,
County of Hughes, ss:

Be It Remembered, That on the 22nd day of August, in the year of our Lord one thousand nine hundred and thirteen, before me, a notary public in and for said County and State, personally appeared Jack Gouge and Ernest Gouge and _____ to me known to be the identical persons who executed the within and foregoing instrument and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

In witness whereof I have hereunto set my official signature and affixed my notarial seal the day and year first above written.

[SEAL.]

ROBERT McRAY,
Notary Public.

My commission expires 2/17/16.

In the District Court of the United States Within and for the Eastern District of Oklahoma.

No. 2017. In Equity.

UNITED STATES OF AMERICA, Complainant,

v.

BESSIE WILDCAT et al., Defendants.

J. W. McNeal and L. W. Baxter, citizens and residents of the City of Tulsa, in the Eastern District of the State of Oklahoma, respectfully pray that they be allowed to intervene in the above entitled cause and set up their right, title and interest in and to the northwest quarter of section nine, township 18 north, range 7 east and to the oil and gas rights in said land against all the parties, both complainant, defendants and cross-complainants, and respectfully represent to the court that they are entitled to three-fourths of the oil and gas that has so far been taken and that is being taken or that which in the future may be taken from said quarter section of land; that they have rights under leases made in 1914 before the filing of case No. 2017 in equity, and that those leases have been kept alive and the interests thereunder assigned to these intervening petitioners, and they
184 herewith present their intervening petition showing the facts of such their claim, right and interest, and pray that they be allowed to file the same in this cause as intervening petitioners.

J. W. McNEAL,

L. W. BAXTER,

By HORACE SPEED,

Their Attorney.

Endorsed: Filed in Open Court Sep. 7, 1915. R. P. Harrison,
Clerk U. S. District Court, Eastern District of Oklahoma.

In the United States Court for the Eastern District of Oklahoma.

No. 2017-E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Supplemental Practice for Transcript.

To the Clerk of the above named Court:

You will please incorporate into the transcript of record on the appeal taken by the complainant, the United States of America, in the case of the United States of America, complainant, v. Bessie

Wildecat, a minor, et al., defendants, No. 2017-E., the following portions of the record in addition to these set forth in the original praecipe, to-wit:

1. Suggestion of the death of the appellee, Max H. Cohn, and voluntary revivor.

2. Order of revivor in re death of Max H. Cohn.

D. H. LINEBAUGH,

United States Attorney.

W. P. Z. GERMAN,

Special Assistant to the United States Attorney.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017-E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the supplemental praecipe of appellant indicating additional portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

185 Dated November 2nd, 1915.

BARNEY UNUSSEE,

BARNOSSEE UNUNOSSEE,

FULHOHCHEE BARNEY,

SIAH BARNEY,

TOMMY BARNEY, AND

MOLLIE BARNEY,

By OWEN & STONE,

Their Solicitors.

Dated November 2nd, 1915.

JOHNATHAN R. POSEY,

By F. SCRUGGS, *His Solicitor.*

Dated November 2nd, 1915.

ROBERT OWEN BURTON,

NATHANIEL MACK BURTON,

LYDIA BELLE WILSON, *Nee*
BURTON;

SAMUEL L. BURTON,

MINNIE OLA EDWARDS, *Nee*
BURTON;

ABI L. MILLER, *Nee* BUR-
TON, AND

MARY ELIZA BURTON,

By BAILEY, WYAND & MOON,

Their Solicitors.

Dated November 2nd, 1915.

BESSIE WILDCAT, A MINOR;
SANTA WATSON,

*As Guardian and Guardian ad Litem for
Bessie Wildcat, a Minor;*
CINDA LOWE,
LOUISA FIFE,
ANNIE WILDCAT AND
EMMA WEST,
By GEORGE S. RAMSEY,
EDGAR A. DE MEULES,
Their Solicitors.

Dated November 2nd, 1915.

AGGIE MARSHALL,
PHILLIP MARSHALL,
CELIA YAHOLA,
TONEY CHUPKO,
JOSEPH CHUPKO,
JAMES C. CHUPKO,
EDDIE LARNEY,
POLLY YARGEE,
SARKARYE CHUPKO,
DICK LARNEY,
MOSER CHUPKO,
TOMMY CHUPKO,
LINDA HARJO,
MARY JONES, AND
LOLEY COOPER,

By RALPH P. WELCH AND
FRANKLIN & CARY,

Their Solicitors.

Dated November 2nd, 1915.

H. B. BEELER,
By MALCOLM E. ROSSER,
Their Solicitors.

6 Dated November 2nd, 1915.

D. L. BERRYHILL,
CHARLES S. SMITH,
NORA WATSON, A MINOR;
JOHN SMITH,
LEWIS SMITH,
LAWRENCE SMITH,
GUY SMITH,
ELLA LOONEY, *Nee* SMITH;
EDNA PIKE, *Nee* SMITH;
PEARLIE SMITH,
WILLIS SMITH, A MINOR;
J. S. TILLY,
Guardian of Willis Smith, a Minor;
RANNIE SMITH,

ELIZABETH RHYNE, *Nee*
 SMITH;
 RASHIE C. SMITH,
 MONTIE NUNN, *Nee* SMITH, AND
 LOU SMITH,
 By J. B. FURRY,
 E. C. MOTTER,
Their Solicitors.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the supplemental praecipe of appellant indicating additional portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated November 2, 1915.

HASKELL B. TALLEY,
*Solicitors for Jack Gouge, Ernest Gouge,
 Mattie Bruner, Formerly Mattie Phillips;
 Jennie Phillips, Billie Phillips, and William McCombs & D. L. Berryhill.*

In the United States District Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the supplemental praecipe of appellant indicating additional portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated November 2nd, 1915.

BELL & FELLOWS,
*Solicitors for M. M. Traves, Administrator of
 the Estate of Max H. Cohn, Deceased.*

7 In the United States District Court for the Eastern District
of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the supplemental praecipe of appellant indicating additional portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated November 2nd, 1915.

SHERMAN, VEASEY & DAVIDSON,
*Solicitors for Charles F. Bissett, Taxaway
Oil Co., a Corporation; F. L. Moore and
J. S. Cosden.*

In the United States District Court for the Eastern District of
Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the supplemental praecipe of appellant indicating additional portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated November 2nd, 1915.

HORACE SPEED,
*Solicitors for J. W. McNeal
• and L. W. Baxter.*

In the United States District Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the supplemental praecipe of appellant indicating additional portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated November 2nd, 1915.

SHEA & BLUE,
Solicitors for Howard Weber.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the supplemental praecipe of appellant indicating additional portions of the record to be incorporated
188 in the transcript on the appeal in said cause is hereby acknowledged.

Dated November 2nd, 1915.

ROWLAND, TALBOTT & NYCE,
Solicitors for Dave Knight.
By J. D. TALBOTT.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the supplemental praecipe of appellant indicating additional portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated November 3, 1915.

JOHN DEVEREUX,
Solicitor for Saber Jackson.

*

In the United States District Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the supplemental praecipe of appellant indicating additional portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated November 3, 1915.

WM. A. COLLIER,
*Solicitors for Martha Simmons
and Hannah Bullette.*

In the United States District Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the supplemental praecipe of appellant indicating additional portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated November 10th, 1915.

E. J. VAN COURT &
HAZEN GREEN,

*Solicitor for Jack Gouge, Ernest Gouge, Mattie
Bruner, Jennie Phillips, Billie Phillips and
William McCombs.*

189 In the United States District Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the supplemental praecipe of appellant indicating additional portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated November 10th, 1915.

W. A. LEDBETTER,
*Solicitor for Anna Messenger,
Yetta Cohn and Isadore Cohn.*

In the United States District Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the supplemental praecipe of appellant indicating additional portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated November 10, 1915.

STUART, CRUCE & CRUCE,
Solicitors for Black Panther Oil & Gas Co.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Acknowledgment of Service.

Service of a copy of the supplemental praecipe of appellant indicating additional portions of the record to be incorporated in the transcript on the appeal in said cause is hereby acknowledged.

Dated November 13th, 1915.

J. COODY JOHNSON,
Solicitor for Martha Jackson, a Minor; Saber Jackson, as Guardian, and Guardian ad Litem and Next Friend of Martha Jackson, a Minor, and J. Coody Johnson.

Endorsed: Filed Nov. 16, 1915. R. P. Harrison, Clerk. U. S. District Court, Eastern District of Oklahoma.

190 In the United States Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,
v.

BESSIE WILDCAT et al., Appellees.

Order.

Now on this the 15th day of November, 1915, the above entitled and numbered cause came on to be heard upon the suggestion of the death of the appellee, Max H. Cohn, by his heirs, and their voluntary appearance and prayer that the cause be revived in their names, and upon consideration thereof it is ordered that said cause be and the same is hereby revived in the names of Anna Messenger Yetta Cohn and Isadore Cohn, as the heirs of Max H. Cohn, deceased, and they are made parties in the place of the said Max H. Cohn.

RALPH E. CAMPBELL, Judge.

Endorsed: Filed In Open Court, Nov. 15, 1915. R. P. Harrison
Clerk U. S. District Court, Eastern District of Oklahoma.

In the United States District Court for the Eastern District of Oklahoma.

No. 2017. E.

UNITED STATES OF AMERICA, Appellant,
v.

BESSIE WILDCAT, a Minor, et al., Appellees.

Voluntary Revivor.

Come now Mrs. Anna Messenger, Mrs. Yetta Cohn and Isadore Cohn, and show to the court that the defendant Max H. Cohn departed this life on September 21, 1915, in the State of Oklahoma and that he left surviving him no children or other descendants and no father or mother, but left as his sole and only heirs at law said Anna Messenger and Yetta Cohen, his sisters, and Isadore Cohn, his brother, the first two of whom reside at Portsmouth Virginia, and the last of whom resides at Goldsboro, North Carolina.

The said heirs of said Max H. Cohn, deceased, do hereby voluntarily enter their appearance in the above entitled cause as defend-

ants and appellees in the place of the said Max H. Cohn, praying the court to enter an order reviving said cause in their names.

ANNA MESSENGER,
YETTA COHN—COHN AND
ISADORE COHN,
By W. A. LEDBETTER,
Their Solicitor.

Endorsed: Filed Nov. 15, 1915. R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

191

(Copy.)

In the District Court of the United States for the Eastern District of Oklahoma.

No. 2017-E.

UNITED STATES OF AMERICA, Appellant,

v.

BESSIE WILDCAT et al., Appellees.

Order.

On this the 15th day of November, 1915, the above entitled cause came on to be heard upon the application of the appellant, the United States of America, by its solicitors, for an order enlarging the time within which the transcript of record may be filed in the United States Circuit Court of Appeals for the Eighth Circuit at St. Louis, and upon consideration of said application, being well and sufficiently advised in the premises, I find that good cause exists for the enlargement of said time.

It is, therefore, considered and ordered that the appellant in the above entitled action may have until December 22, 1915, within which to docket this case and file record on appeal in said cause in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

RALPH E. CAMPBELL,
*United States District Judge for the
Eastern District of Oklahoma.*

Certificate of Clerk.

UNITED STATES OF AMERICA,
Eastern District of Oklahoma. ss:

I, R. P. Harrison, clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above

and foregoing is a full, true and correct transcript of so much of the record in the case of United States of America v. Bessie Wildcat, et al., No. 2017 Equity, as was ordered by preceipes of counsel herein to be prepared and authenticated, as the same appears from the records in my office.

I do further certify that the original Citation issued in this cause is hereto attached and returned herewith.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court at my office, in the City of Muskogee, this 18th day of December, A. D. 1915.

R. P. HARRISON, *Clerk,*
[SEAL.] By H. E. BOUDINOT, *Deputy.*

192 And thereafter the following proceedings were had in said cause, in the Circuit Court of Appeals, viz:

(*Appearance of Counsel for Appellant.*)

United States Circuit Court of Appeals, Eighth Circuit.

No. 4624.

UNITED STATES OF AMERICA, Appellant,
vs.

BESSIE WILDCAT et al.

The Clerk will enter my appearance as counsel for the Appellant.

D. H. LINEBAUGH,
U. S. Attorney.
W. P. Z. GERMAN,
Sp. Ass't U. S. Att'y.
PAUL PINSON,
Sp. Ass't U. S. Att'y.
A. A. DAVIDSON.

(Endorsed:) Filed in U. S. Circuit Court of Appeals on May 18, 1916.

(*Order of Argument, etc.*)

May Term, 1916.

TUESDAY, May 16, 1916.

This cause having been called for hearing in its regular order, it is now here ordered, upon the joint application of counsel for all parties, that the time for oral argument of this cause be, and is hereby, extended to two hours for each of the parties, and leave is also granted to three counsel to participate in the oral argument on

behalf of appellees, thereupon, argument was commenced by Mr. A. A. Davidson for appellant, and the hour for adjournment having arrived further argument is now postponed until tomorrow.

193

(Order of Submission.)

May Term, 1916.

WEDNESDAY, May 17, 1916.

This cause having been called for further hearing, argument was resumed by Mr. A. A. Davidson for appellant, continued by Mr. Joseph C. Stone, Mr. J. J. Shea and Mr. C. B. Stuart for the appellees and concluded by Mr. W. P. Z. German for appellant.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

(Order to File, Enter of Record and to Transmit Certificate of Questions to Supreme Court of the United States.)

United States Circuit Court of Appeals, Eighth Circuit.

September Term, 1916.

FRIDAY, October 20, 1916.

No. 4624.

UNITED STATES, Appellant,

vs.

BESSIE WILDCAT et al.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

In the above entitled cause certain questions having arisen on the record, upon which this court desires the instruction of the Supreme Court of the United States as provided by law, and a certificate of such questions having been prepared and duly signed, it is now here ordered by this Court that such certificate be filed and entered of record in this court, and that the original of said certificate be duly certified by the Clerk of this Court and that it be by him duly transmitted to the Supreme Court of the United States for its action thereon.

October 20, 1916.

194 (*Certificate of Questions to the Supreme Court of the United States.*)

United States Circuit Court of Appeals, Eighth Circuit.

September Term, A. D. 1916.

No. 4624.

UNITED STATES OF AMERICA, Appellant,

vs.

BESSIE WILDCAT, a Minor; SANTA WATSON, as Guardian of Bessie Wildcat, a Minor; Cinda Lowe, Louisa Fife, Annie Wildcat, Emma West, Martha Jackson, a Minor; Saber Jackson, as Guardian and Next Friend of Martha Jackson, a Minor; J. Coody Johnson, Aggie Marshall, Philip Marshall, H. B. Beeler, Max H. Cohn, Black Panther Oil & Gas Company, a Corporation; Jack Gouge, Ernest Gouge, Mattie Bruner, formerly Mattie Phillips; Jennie Phillips, Billie Phillips, D. L. Berryhill, William McCombs, Barney Unussee, Burnossee Unussee, Johnathan R. Posey, Charles F. Bissett, Taxaway Oil Company, a Corporation; F. L. Moore; J. S. Cosden; Fulholchee Barney, Siah Barney, Tommy Marney, Mollie Barney, Toney Chupko, Joseph Chupko, James C. Chupko, Eddie Larney, Polly Yargee, Sarkarye Chupko, Dick Larney, Moser Chupko, Tommy Chupko, Linda Harjo, Mary Jones, Loley Cooper, Celia Yahola, Charles S. Smith, Nora Watson, a Minor; John Smith, Lewis Smith, Guy Smith, Ella Looney, née Smith; Edna Pike, née Smith; Pearle Smith, Willis Smith, a Minor; J. S. Tilly, Guardian of Willis Smith, a Minor; Rannie Smith, Elizabeth Rhyne, née Smith; Pashie C. Smith, Montie Nunn, née Smith; Lous Smith, Howard Weber, Saber Jackson, Martha Simmons, Hannah Bullette, Robert Owen Burton, Nathaniel Mack Burton, Lydia Belle Wilson, née Burton; Abi L. Miller, née Burton; Ola Edwards, née Burton; Mary Eliza Burton, J. W. McNeal, L. W. Baxter and Dave Knight, Appellees.

195 *Questions and Statement of Facts Certified to the Supreme Court of the United States.*

This cause came duly to this Court upon appeal from the District Court of the United States for the Eastern District of Oklahoma, and was argued before the undersigned judges, and submitted. It involves three questions of law concerning which the members of this court desire the instruction of the Supreme Court of the United States for their proper decision. Said questions, together with the facts on which they arise, are set forth in the following statement, and the same are hereby certified by this Court to the Supreme Court for its instruction.

This is a suit in equity brought by the United States on behalf of

Creek Nation against the heirs of Barney Thlocco, a full-blood Creek Indian, to obtain cancellation of the allotment certificate and deeds for his allotment of 160 acres. The defendants, Posey, Bassett, away Oil Co., Moore and Costain, claim an interest in five acres of the same property under a subsequent allotment. They intervene to ask the same relief as the United States. They will, therefore, require no further notice. All the other defendants claim as heirs of Thlocco. No right is asserted as a bona fide purchaser or encumbrancer on behalf of any of them.

Section 28 of the Original Creek Agreement, (31 Stat. at Large, p. 869), provides for the enrollment of all citizens of the nation who are living on the first day of April, 1899." Citizens who died prior to that date lost their right of enrollment, and to share in the tribal estate. The bill of complaint rests the right of the government to relief upon three grounds:

1. That Thlocco died prior to April 1st, 1899, to-wit, in the month of January of that year.

2. That the Dawes Commission, in entering his name upon the tribal roll, and in causing the land in question to be conveyed to him, acted under a gross mistake of fact and law, and also acted arbitrarily, and wholly without evidence as to whether Thlocco was living April 1, 1899. No charge of fraud is made.

3. That the certificate of allotment and deeds to Thlocco were made to a dead man, and were for that reason null and void.

The answer avers that Thlocco was living April 1, 1899. It denies that the Commission acted arbitrarily and without evidence in placing his name upon the roll, and allotting the lands to him, and alleges that the Commission, in causing both those acts to be done, was not guilty of any mistake of fact or of law, but acted upon evidence satisfactory to it, and sufficient in law and in fact. It further alleges that the Dawes Commission was vested with jurisdiction to determine what persons were entitled to enrollment as citizens of the nation, and entitled to allotment out of the tribal lands, and that its decision in that regard having been approved by the Secretary of the Interior, "said enrollment allotment and patent cannot be cancelled, nor can the issue of fact upon which the Commission placed the name of Barney Thlocco upon the approved Creek Roll be tried again; and these defendants say that this court is without authority of law to reopen or retry the question of fact sought to be put in issue by the United States." The answer admits that Thlocco died prior to the issuance of his allotment certificate, June 30, 1902.

Upon the trial of the case the government offered to show by numerous witnesses, and by circumstances of persuasive force, that Thlocco in fact died in the Month of January, 1899, of smallpox. Objection was made to this evidence by the defendants, and the objection was sustained and exception saved by the government. The trial court thus ruled upon the ground that the question whether Thlocco was living on April 1st, 1899, was one of the questions which the law submitted to the Dawes Commission, and that its decision, by placing Thlocco's name upon the tribal roll, could

only be attacked upon the ground of fraud, error of law, or gross mistake of fact, or upon the ground that the Commission acted arbitrarily and wholly without evidence; that it was not open to the government for the purpose of attacking the allotment certificate and deeds to Thlocco, to retry the question of fact as to whether he was living April 1st, 1899.

Thlocco's enrollment was approved by the Secretary of the Interior March 23, 1902. His allotment certificate was made June 30, 1902. The deeds for his homestead and surplus lands were executed March 11, 1902, approved by the Secretary of the Interior

April 3rd of that year, and filed for record April 11. They 197 were never delivered. On the contrary, as will be presently

explained, the attention of the Commission was drawn to the fact that Thlocco had died prior to April 1st, 1899. Thereupon the deeds were recalled from the Principal Chief, and have since remained in the custody of the Commission. The Government, in further support of its bill, offered to show by a certified copy of the record and evidence, that on August 25, 1904, the attorney of the Creek Nation presented to the Commission a motion to reopen the enrollment of Barney Thlocco upon the ground that he died prior to April 1st, 1899, supporting the same by sworn affidavits of two witnesses; that this motion was entertained by the Commission, which recommended to the Secretary of the Interior that Thlocco's enrollment be re-examined. That September 16, 1904, the Secretary of the Interior directed a rehearing before the Commission. That such rehearing was had, at which time evidence in support of the motion was received. That as the result of such hearing the Commission, on October 10, 1906, recommended to the Secretary of the Interior "that authority be granted for the striking of the name of said applicant (Thlocco) from the approved roll of citizens of the Creek Nation," and that on December 3, 1906, the Secretary of the Interior approved this recommendation, and directed the Commission to cancel Thlocco's name from the tribal roll, and further stated in the decision that the Attorney General had been requested to take such action as he may deem proper looking to the setting aside of the deeds here involved. That the enrollment was in fact cancelled, pursuant to the decision. Objection was made to this evidence by the defendants, and sustained by the court, upon the same grounds as were stated in support of the ruling in respect to the oral evidence relating to the date of Thlocco's death, and an exception saved on behalf of the government.

The trial then proceeded. The trial court restricted the government to showing that the Dawes Commission acted in Thlocco's case wholly without evidence. This ruling foredoomed the government to defeat, because the information, if any, upon which the Commission acted was oral. No record or memorandum of it was ever preserved. The enrollment and allotment were both arbitrary in the sense that they were made without petition, and wholly on the initiative of the Commission; and, owing to the many thousands of identical cases which came before the Commission and its clerical force, no person who had to do with Thlocco's

nrollment or allotment had any present recollection as to what, if any, information was received. At the conclusion of the case the government renewed its offer of proof, to which objections were sustained upon the grounds above stated. A decree was then entered dismissing the bill for the reason that the government had failed to show that the commission in enrolling Thlocco acted arbitrarily and without evidence. To review that decree the government sued out his appeal.

The rulings as to the admissibility of evidence present the question as to the force to be given to the decisions of the Dawes Commission. To understand that a review of the procedure of the Commission is necessary. In stating this we have consulted its Annual Reports as well as the evidence contained in the transcript.

It has been several times stated in judicial opinions that the Dawes Commission was a special tribunal created by law and vested with jurisdiction to determine the right to citizenship in the Five Civilized Tribes, and the share of each citizen in the tribal property. Those statements convey the idea that the entire Dawes Commission sat as a court to hear evidence pro and con, and pronounce judgment as to the rights of each citizen of the tribes. Such, however, is not the fact. It was only in the most important affairs of the tribes, involving litigated contests, and affecting large groups of Indians, that the Commission sat as a tribunal. They were engaged in a great governmental enterprise involving the rights of citizens in five nations, and the valuation of lands and improvements in a territory as large as the State of Indiana. Their time was absorbed in drafting laws and negotiating agreements with the tribes, in acting as an intermediary between them and the government at Washington, and in organizing the clerical and administrative forces necessary to carry out this great enterprise. The Commission, as a whole, could not deal with the rights of an individual citizen except in those cases in which he represented a larger group. Many of these important subordinate questions, even in litigated matters, were heard before

individual commissioners. When we descend to the rights
199 of the individual Indian to enrollment, the selection of his allotment, its valuation and classification, those investigations were mainly carried on by the large clerical force employed by the Commission. For each tribe this force was divided into three groups: The Enrollment Division, the Classification and Valuation Division, and the Allotment Division. All of these, of course, were under the supervision of the Commission who formulated their procedure and supervised their work. As a general rule the hearing of the statements of Indians, the gathering of information by inquiries, and by so-called "field parties," as to the right to enrollment, and the right to the allotment selected by the individual Indians, were left to this clerical force. By the rules of the Commission, every adult Indian was required to present himself in person to the Commission, and apply for enrollment of himself and his minor children. The clerical force heard his statements, examined him to discover the information required, and, when necessary prosecuted the inquiry by calling others and hearing their statements on the subject. They

acted in a purely administrative way. As a rule the statements were not given under oath. If the information seemed doubtful, inquiries were made of town officers and of neighbors, when those neighbors presented themselves for enrollment. In other cases a field party, consisting of a group of clerks, was sent out into the Indian neighborhood or township, and hearings were had there on the ground. As already stated, all investigations were conducted in a purely administrative way. Anything that would give information was received, without regard to the rules of evidence which obtain in more formal tribunals. The enrollment was made by means of so-called census cards. These were devised by the Commission to present in the briefest possible form the data required by the law and the rules of the Commission. Each Indian was given a separate card, and a separate number, and the cards were arranged on the principle of a card index so as to be readily accessible. Upon each card was entered the data as it was obtained. Sometimes the card was made out complete, upon the application of the Indian for enrollment, and at other times it required prolonged investigations. When a block of these cards had been completed, the clerks of the enrolling division would present them to the Commissioner in charge, and go over them with him, and make a report of the information received. If the information was found to be sufficient, the cards were approved by the Commissioner. If the information was found to be insufficient the investigation was prosecuted further until such information had been gleaned as met with the approval of the commissioner in charge. No record of the information was kept except in contested cases. When the cards were approved they were passed on to be entered in the final rolls. These final rolls were simply a transcript of the approved cards made upon similar cards. They were made out in quadruplicate, one for the Commission, one for the Indian Nation, one for the Commissioner of Indian Affairs, and one for the Secretary of the Interior. To expedite the work of enrollment when a schedule of about 500 names had been gathered and approved, the final roll was made up for those names, and certified by the chairman of the Commission, without waiting for a complete roll of the tribe. It was then sent to the Secretary of the Interior for his approval, and upon being approved, became a part of the final roll of the nation. In nearly all cases, the approval of the Secretary must have been perfunctory. He had before him nothing but the cards themselves. Except in contested cases, no evidence was transmitted by the Commission. There was, therefore, before the Secretary nothing upon which he could exercise judicial or quasi-judicial judgment by way of reviewing the action of the Commission.

The full-blood Indians took strong ground against the Dawes Commission and its plan for the allotment of the tribal lands. This was especially true in the Creek and Cherokee Nations. The full-bloods of those tribes had been steadily pressed back to the extreme western part of the Territory by the fraudulent appropriation of the better lands to the east. There they dwelt in a state of primitive

savagery as compared with the balance of the tribe. Many of them resisted all efforts of the Dawes Commission to persuade or force them to appear for enrollment or for the selection of allotments. This resistance was organized and permanent. At one time it assumed the form of what is known in the evidence in this case, and in the reports of the Commission, as the "Snake Indian Uprising." This antagonism was promoted by head men of the townships in which these full-bloods lived. The reports of the Commission for 1904 and 1905 show that it continued until after the work of enrollment and allotment for the Creek Nation was completed.

201 This resistance of the full-bloods presented an unexpected difficulty. To have allotted and disposed of the tribal lands without making provision for them would have left them on the hands of the government destitute, discontented and belligerent. The government had no other public lands to which they could have been removed and permitted to live in tribal state. Not to provide for them would have doomed the entire enterprise to failure.

To meet this difficulty the Commission was compelled to resort to arbitrary methods. Section 21 of the Curtis Act empowered the Commission "to require all citizens of said tribes, and persons who should be so enrolled, to appear before said Commission for enrollment at such times and places as may be fixed by said Commission." The rules of the Commission required all adult Indians to appear in person before them for enrollment, but, acting upon the analogy of the section in regard to the selection of allotments, permitted the head of the family to enroll minor children. Section 4 of the Original Creek Agreement, by express provision, permitted selections of allotments for minors to be made by the head of the family, or by their guardian. Thus, by implication, it forbade the selection of allotments for adults to be made otherwise than by the citizen in person. This inference is strengthened by the clause in Section 2 of the same agreement, authorizing allotments of 160 acres to each citizen, "which may be selected by him so as to include improvements." In the case of the obstinate full-bloods the Indians refused to appear before the Commission or to give information. As to them, therefore, the rules of the Commission and the statutes requiring their personal appearance were disregarded both as to enrollment and allotment. The Commission itself, acting without any personal appearance of the Indian, but upon such information as it could obtain from the tribal rolls, and by administrative inquiries, entered the names of those obdurate full-bloods upon the final roll, and made to them, without any personal application on their part, and by what is known in the reports of the Commission as "arbitrary" selections, allotments of land. In the Creek Nation, down to the report for 1904, there were 3261 of such "arbitrary" allotments, out of a total enrollment of 15,359.

202 Section 28 of the Original Creek Agreement aggravated this situation as to enrollment. It provided as follows:

"No person, except as herein provided, shall be added to the rolls of citizenship of said tribe, after the date of this agreement, and no

person whomsoever shall be added to said rolls after the ratification of this agreement."

The agreement was ratified May 25, 1901. The tribe assembled at Okmulgee, its capital, some days before that date, for the purpose of considering and acting upon the agreement. For weeks the chiefs of the tribe and the Dawes Commission had been keenly solicitous as to the fate of the full-blood members who had not yet been enrolled. At the date of the Okmulgee meeting there were between three and four thousand of such citizens whose names appeared on the tribal rolls, and who had not been entered on new census cards for enrollment. About two weeks prior to May 25, a member of the Dawes Commission, with a force of clerks, went to Okmulgee where the Indians were in session, with two objects in view: First to induce the Indians to ratify the Original Creek Agreement; second, to complete the enrollment of the tribe. The report and the evidence in the present case show the efforts made by the Commission to bring in the full-bloods for enrollment before the ratification of the agreement, and the refusal of the chiefs of the tribe to act on it until these members had been enrolled. Neither the evidence on the trial of the present case, nor the report of the commission, gives any definite statistics as to the success of these efforts. It is, however, clearly shown that after all efforts had been exhausted there were a large number of names upon the tribal rolls that had not been accounted for, and that the representatives of the nation refused, at the face of Section 28 of the Agreement, to ratify it until some provision should be made that would prevent these citizens from being deprived of their tribal rights. To meet that difficulty the members of the Commission in charge decided to list upon new census cards all names appearing upon the tribal rolls of 1890 and 1895 of those who had not already been enrolled. During the last two or three days the clerks were busy transferring those names to the new census cards, working until late into the night. It was considered that this would be the beginning of the enrollment of those citizens, and would thus be sufficient to satisfy the requirements of Section 28.

203 Turning now to Thlocco's enrollment: He was one of the "unaccounted for" full-bloods. His card was made out at Okmulgee on the 24th day of May, 1901, the last day before the ratification of the agreement, and while this work of entering names upon the new census cards was going on, as above described, to meet the requirements of Section 28. His name was not only on the tribal rolls, but the Commission also had for him an "old census" card which was prepared while the Commission was taking the census under the act of June 10, 1896. This was made out between October 15, 1897, and December 25, 1897. It contained the descriptive matter needed to complete Thlocco's new census card. Thlocco's new census card was, therefore, made out on the 24th day of May, 1901, complete as it appears in the final rolls approved by the Secretary of the Interior. The new card shows that the clerk who made it out before him some information in addition to that contained in the tribal rolls, and the old census card, for the postoffice and age.

Thlocco are stated differently in the new card from the old. No person appeared to request Thlocco's enrollment. None of the clerks or the commissioner who was present had any present recollection in regard to the enrollment. None of his heirs appeared to request his enrollment upon the ground that he had died subsequent to April 1, 1899. This is the manner in which Thlocco's name was listed for enrollment, and his census card made out. That card being complete, his name would, in the regular practice of the Commission, be transcribed to the final rolls, unless some reason was brought to the notice of the Commission, or its clerical force, showing that the name ought not to be transferred to the final roll.

There is no evidence in the record as to what, if any, investigation was made at the time Thlocco's card was made or subsequently, to ascertain whether he was living on the first day of April, 1899. Nobody concerned in the matter of his enrollment has any recollection on that subject. There is evidence of the practice of the Commission to make inquiries and investigations to ascertain that fact as to the persons enrolled, and that no name ever was enrolled without information that was deemed satisfactory at the time; but as to what, if anything, was done in the case of Thlocco there is an entire absence of memory.

When evidence of the death of any citizen was obtained that was satisfactory, it was put in the form of an affidavit which was filed as a permanent record, and an entry made in ink on the 204 census card of the citizen, referring to this affidavit.

To obtain these "proofs of death" was one of the constant searches of the Commission. Their annual reports give the statistics as to the number of proofs of death obtained during each year. Forms of affidavit for that purpose were prepared by the Commission and sent out to the clerks of court, probate judges and sheriffs, and were also placed in the hands of field parties, and whenever any person was discovered who had sufficient information to make affidavit to the fact and time of the death of a citizen, the affidavit was taken and sent in to the Commission as a permanent record. In the case of Thlocco no such affidavit was ever obtained. On the contrary, the evidence is conclusive that the Commission throughout its dealing with his name, from the time of his enrollment down to the time of the issuing and recording of his deeds, believed him to be alive. We say this because the certificate of allotment and the deeds of allotment are made out to Thlocco in person, instead of being made out to his heirs. It was the uniform practice of the Commission to make certificates and deeds of allotment to the heirs of a citizen who was known to have died subsequent to April 1st, 1899, and not to the citizen himself. Official forms of such deeds were prepared by the Commission. The number of deeds "to heirs" are specified in the annual reports. Down to 1904 they amounted to 1251 in the Creek Nation. The uniformity of this practice is further shown by the following entry in the report for 1906, at page 64:

"Prior to the act of April 26, 1906, it was necessary that deeds covering the lands of deceased allottees be issued to the heirs of the deceased; and in cases where deeds had been issued before evidence

of death was received, it was necessary to recall them and issue new deeds to their heirs. For this reason 220 deeds were cancelled during the past year, and new deeds to the heirs of deceased allottees issued in their stead."

The Dawes Commission did not treat the rolls as final after their approval. Fourteen hundred and forty-seven names were cancelled from the final rolls of the Choctaw and Chicasaw nation after their approval by the Secretary. This was done because these persons, after their final enrollment, were discovered to have died prior to the date fixed by the statute. Three hundred and fifty names were stricken from the Cherokee roll at one time for the same reason. Many names were cancelled from the Creek roll upon the same ground. Two years after Thlocco's enrollment was approved, when the facts touching his enrollment must have been comparatively fresh in the mind of the Commission and its clerical force, application to cancel his enrollment upon the ground that he died prior to April 1st, 1899, was entertained, and upon a subsequent hearing the enrollment was cancelled for that reason.

The property here involved at the time of the allotment was of small value; but, owing to the discovery of oil upon it, its value now, as stated in the argument of the case, is several million dollars.

The questions of law involved in the case concerning which the members of this Court desire the instruction of the Supreme Court of the United States for their proper decision, are:

1. Should the evidence offered by the government to show that Thlocco died prior to April 1st, 1899, have been admitted?
2. Should the evidence offered by the government to show that Thlocco's enrollment was cancelled by the Dawes Commission, have been admitted?
3. Were the certificate of enrollment and deeds to Thlocco null and void because he was dead at the time they were made?

Questions one and two involve no question of pleading or the competency or relevancy, as proof, of the evidence offered. They involve rather a question of substantive law, and go to the right of the government to show the facts offered to be proved as a basis for the relief asked in the bill.

WILLIAM C. HOOK,
Circuit Judge.
WALTER L. SMITH,
Circuit Judge.
CHARLES F. AMIDON,
District Judge.

Attest:
[SEAL.] JOHN D. JORDAN, *Clerk.*

206 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, Clerk of the above named Court, do hereby certify that the foregoing certificate in the case of United States of America, Appellant, vs. Bessie Wildecat, a Minor, etc., et al., No. 4624, was duly filed and entered of record in my office by order of said Court, and as directed by said Court, the said certificate is by me transmitted to the Supreme Court of the United States for its action thereon.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Paul, Minnesota, this twentieth day of October, A. D. 1916.

[SEAL.] (Signed) JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Endorsed:) Filed in U. S. Circuit Court of Appeals on Oct. 20, 1916.

(Pravice by Appellees for Transcript for Supreme Court.)

To the Clerk of the above named Court:

Prepare and certify in the above entitled cause the whole of the record in form to be filed in the Supreme Court of the United States with an application to said Supreme Court that the whole record and cause may be sent up to it for its consideration, as provided for by Supreme Court Rule 37.

JOSEPH C. STONE,
Muskogee, Okla.,
Attorney for Appellees.

(Endorsed:) Filed in U. S. Circuit — of Appeals on Nov. 27, 1916.

207 (*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma as prepared, printed and certified by the Clerk of said District Court to the United States Circuit Court of Appeals in pursuance of the Act of Congress, approved February 13, 1911, and full, true and complete copies of all the pleadings, record entries and proceedings, including the

opinion, had and filed in the United States Circuit Court of Appeals except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, prepared pursuant to the preceipe by appellees, in a certain cause in said Circuit Court of Appeals wherein the United States of America is Appellant, and Bessie Wildcat, a Minor, et al., are Appellees, No. 4624, as full, true and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this second day of December, A. D. 1916.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals.

